Contested Landscapes:
An Analysis of Using the National Historic Preservation Act (NHPA) for Traditional Cultural Properties (TCPs) in the Western United States

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Table of Contents

List of Figures 3

List of Acronyms 4

I. Introduction 5

II. Understanding the United States and American Indians' Relationship through a Political Ecology Lens 9

III. The NHPA: Legal Context and Pertinent Provisions 14

IV. Research Design 19
- i. Data Collection 19
- ii. Data Analysis 24

V. Results and Discussion 25
- i. The Proper Skill Set 26
- ii. Understanding the Landscape 44
- iii. Taking a Proactive Approach 56

VI. Conclusion 70

References Cited 74

Appendices 84
- Appendix A: List of Research Participants.....84
- Appendix B: Informed Consent Form 86
- Appendix C: Case Studies' Site Descriptions 88
- Appendix D: Semi-Structured Interview Questions on TCPs 94
- Appendix E: Summary Data Points for Case Studies 96

List of Figures

Figure 1: Researcher Kate Monti Barcalow interviewing the Cowlitz Tribe's ecologist Nathaniel Reynolds during their site visit to Mount St. Helens with Forest Service employee Rick McClure 22

Figure 2: Mount St. Helens 43

Figure 3: A view of Mount Shasta from the city of Mount Shasta 48

Figure 4: Looking out from the Mount St. Helens TCP 52

Figure 5: Medicine Lake located in the caldera of Medicine Lake Highlands 68

List of Acronyms

ACHP	Advisory Council on Historic Preservation
BLM	Bureau of Land Management
CFR	Code of Federal Regulations
MOA/MOU	Memorandum of Agreement/Memorandum of Understanding
NHPA	National Historic Preservation Act
NPS	National Park Service
ROD	Record of Decision
SHPO	State Historic Preservation Officer
TCP	Traditional Cultural Place or Traditional Cultural Property
THPO	Tribal Historic Preservation Officer

Abstract *In this paper, I predominately use a political ecology lens to evaluate the use of the National Historic Preservation Act (NHPA) in facilitating American Indians' engagement with ancestral lands now federally governed. I look at how agencies can implement effective consultation that lessens the power imbalance between tribes and the federal government that is inherent in the NHPA, as well as help alleviate conflict between tribes, agencies, and various public interest groups regarding proper land management and use. From July 2014 through December 2014, I conducted eleven semi-structured interviews of participants involved with five Traditional Cultural Places or Properties (TCPs) in the Pacific Northwest and Southwest, as well as fourteen other individuals involved with TCPs. I used inductive coding to identify themes related to contextual factors that support effective consultation, and thus management, of TCPs. The themes I identified include federal agencies facilitating stronger relationships through effective communication and cultivating cultural understanding, incorporating the way tribes view the landscape into consultation and management practices, and proactively building relationships outside the compliance context. I argue that these themes support a more collaborative approach in managing these culturally important places, which facilitates tribes' reconnection with traditional areas, lessens conflict regarding proper land management and use, and strengthens self-determination through increased recognition of tribal sovereignty. This research further adds to the discussion of power dynamics between indigenous peoples and national governments regarding the management and governance of indigenous ancestral lands.*

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I. Introduction

Since the 1960s, national and international environmental policy increasingly incorporated public participation in land management decisions (Force and Forester, 2002; Reed, 2008; Clawson, 1983). The United States enacted various procedural statutes and policies, most notably the National Environmental Policy Act of 1969 (NEPA) and National Historic Preservation Act of 1966 (NHPA), in part to ensure agencies consider the public and tribes' input in land management (Wray et al., 2009; CEQ, 2007; Alexander, 2012; King, 2000)[1]. However,

[1] Baker (2011) gives a thorough analysis as to whether NEPA is a substantive or procedural statute. For the most part, courts have interpreted NEPA as a procedural statute.

Americans' differing values concerning nature can turn federally governed lands into contested spaces regarding proper resource management and use (McAvoy, 2002; Carpenter, 2006). Activities on federal lands can vary from resource extraction to recreational activities to active management or even strict preservation. Federal land managers often must balance these activities according to various legal mandates and differing pressure from recreationists, tribes, commercial developers, and conservationists (Bluemel, 2005; Wondolleck, 1988).

American Indian tribes may have a particularly strong interest in federal land management and use given their relatively more extensive history and cultural connection to federal lands compared to the general public (Carpenter, 2006; McAvoy, 2002). Many tribes traditionally based their cultures on an integral relationship with the land. Specifically, American Indians often view place-based knowledge and practices, such as stories, songs, and ceremonies, as necessary to sustain the land's spiritual and biological health, as well as serving as the basis of cultural identity (Lewis, 1995). However, a majority of tribes' traditional lands are now federally governed, with federally recognized tribes currently retaining only about 2.7% of their traditional territory (HAC, 2013:94; Albert, 2009; Stapp and Burney, 2002).

Beginning in the early 1990s, tribes increasingly tried to regain access and management over ancestral lands by employing the NHPA for Traditional Cultural Properties or Places (TCPs) (King, 2005; King, 2003). Although the NHPA offers tribes a platform to voice their opinion regarding land management practices on federal lands or with projects requiring federal involvement, it does not guarantee protection or implementation of management practices in accord with tribes' views (Smythe, 2009). Furthermore, the decision making process under the NHPA for these places can be fraught with conflict and sometimes even lengthy litigation as different sectors of the general public assert their interests in land management (Alexander,

2012). The NHPA's effectiveness in addressing potential management issues for TCPs relies largely on agencies' ability to properly implement the statute and related regulations regarding consultation (Nie, 2008).

Throughout this paper, I take a political ecology approach to analyze how the NHPA can reinforce power imbalance between the United States government and American Indian nations, particularly regarding ancestral lands now federally governed. Two questions guided my research: 1) What are the contextual factors that support or hinder mutually agreeable consultation regarding TCPs? and 2) What are proposed next steps for protecting American Indian ancestral lands? I based my analysis on five case studies using semi-structured interviews with eleven key consultants and document review of grey literature, government reports, agency and court decisions, and administrative documents regarding TCPs in the Southwest and Pacific Northwest. I augmented this information through fourteen additional semi-structured interviews with individuals that have experience using the NHPA for TCPs. These 25 interviews included individuals charged with routine consultation, as well as those involved with TCP issues and policy on the national level (see Appendix A for the list of research participants). I specifically noted various contextual factors that aided in effective consultation regarding TCPs that led to mutually agreeable actions or resolution of issues. I argue that these factors can diminish power imbalances, leading to better relationships, less conflict, and more positive land management outcomes for both tribes and federal agencies. In general, I assert that federal agencies should adopt a more collaborative approach in managing TCPs and in building relationships with American Indian nations.

I begin by illustrating how the theoretical framework of political ecology helps explain the relationships between the United States and American Indian nations, particularly in relation

to ancestral lands no longer under tribal governance. I also briefly explain how practice theory helps explain why individuals or groups may pursue certain actions or strategies. I then look at the parameters of the NHPA in terms of what it guarantees for tribes seeking protection of ancestral lands and what is required for federal agencies whose actions may adversely affect TCPs. Next, I describe the methods and results regarding research I conducted on five TCP case studies in the Southwest and the Pacific Northwest and additional semi-structured interviews with those experienced using the NHPA for TCPs. I then analyze the factors identified in the research that facilitated effective consultation, identifying three major themes from the research: 1) the importance of individual actors and their skill sets for effective consultation; 2) better designation and management through a landscape approach; and 3) the benefits of taking a proactive stance regarding management of American Indian ancestral lands. I conclude that these factors by and large encourage a more collaborative approach to consultation, which creates stronger relationships between tribes and agencies, less contestation regarding management practices, and more mutually agreeable land management decisions.

Through my research, I aim to add to the broader discussion on how to better address issues of TCP evaluation against the NHPA requirements and management, and more generally, better approaches for managing American Indian ancestral territories. This analysis provides a much needed regional study of the Southwest and Pacific Northwest concerning use of the NHPA for TCPs, which currently exists in limited form in the academic discourse. My research will also add to the larger discussion of indigenous peoples and the protection of their traditional places (e.g., Di Giminiani, 2013; Verschuuren et al., 2010) by highlighting how the power imbalance between federal governments and indigenous communities plays out in land

management decisions for federally protected areas, and correspondingly may call for a more collaborative approach for managing these important places.

II. Understanding the United States and American Indians' Relationship through a Political Ecology Lens

A political ecology lens facilitates analysis of the social and political players that shape the interaction between ecosystems and humans. This framework pays particular attention to the power imbalance between those players and the resulting landscapes (Vaccaro et al., 2013:255; Andersson et al., 2011:297; Mung'ong'o, 2009:192-193). Political ecology thus combines the field of cultural ecology (primarily focused on human adaptations to the environment) with political economy (mainly centered on historical analyses of the interplay between state and capital) (Biersack, 2006; Paulson et al., 2003; Andersson et al., 2011:297). Robbins (2011:21-23) asserts that the field of political ecology has expanded substantially since the term was first introduced in 1972 to include five major areas of inquiry, including: degradation and marginalization, conservation and control, environmental conflict and exclusion, environmental subjects and identity, and political objects and actors. For my research, I am particularly interested in using a political ecology framework that explores environmental conflict and exclusion in terms of who has the authority to make land management decisions, how this authority is established, the resulting policies, and how these issues relate to broader socio-political issues. This lens is appropriate in helping understand power imbalances between tribes and the federal government in relation to land ownership and management. Generally, Euro-Americans recognized American Indian tribal sovereignty since first contact with tribes; however, they often circumscribed the tribal authority to a diminished or limited capacity. In particular, United States' legal precedent, statutes, and policy construe tribal sovereignty as partially inherent and partially deriving from the federal government granting authority to

American Indian nations (Ford, 2010). Thus, the tribes' authority and ability to govern ancestral lands is subordinate to the federal government's sovereignty. As Ford (2010:400) states, "The relationship between the United States and Native Americans [having] always been one of conquered and conqueror."

Power imbalances between tribes and the federal government are especially apparent in land management practices of American Indian ancestral lands. For centuries, Euro-Americans removed American Indians from their lands through private and federal land takings, coerced and fraudulent treaties, the Allotment Act, and Termination Era policies (Albert, 2009; Ford, 2010; Stapp and Burney, 2002). Reservations reflect only a fraction of the original ancestral territory, and in some cases may not be a part of a tribe's original traditional territory. While tribes can assert the most authority over reservation land, federal requirements often limit or supersede even this authority (Getches et al., 2005; Ford, 2010).

Federal agencies now govern a majority of American Indians' ancestral lands, implementing a number of policies that accentuate the power imbalance between tribes and the federal government. The four major federal land management agencies that administer approximately 95% of American Indian territory, now considered public land, include the Forest Service, Bureau of Land Management, Fish and Wildlife Service, and National Park Service (NPS) (Hoover, 2014:3; Albert, 2009). While federal land managers' mission statements and the Wilderness Act of 1964 require agencies to make management decisions that sustain the lands' health, agencies differ in the extent they must accommodate different uses, such as logging, mining, fishing, hunting, and skiing (Glicksman, 2014; Hoover, 2014).

In places where the federal government enacts conservation policies for public lands, it often bases its decisions on an early conservation ideal known as the fortress model. The fortress

model is a protectionist approach that aims to safeguard natural areas through the exclusion of humans from the landscape (Brockington and Duffy, 2011; Vaccaro et al., 2013). The early conservation movement consequently looked to remove local inhabitants, particularly American Indians, from the newly created national parks (Kalamandeen and Gillson, 2007; Borgerhoff-Mulder and Coppolillo, 2005; Spence, 1999; Frost and Hall, 2009). In the early 20th century, John Muir further pushed this ideal of pristine nature through the implementation of strict preservation practices, which encouraged untouched or unmanaged parks (Borgerhoff-Mulder and Coppolillo, 2005). Vaccaro et al. (2013:256) explain that with the fortress model, regulating bodies that impose restrictions as to who can access the protected area generally do not share authority with local communities or other government agencies. The authors further explain that these regulating bodies link to state-making through governmentality, and that the fortress model ultimately supports the commodification of nature. The concept of governmentality allows for the analysis of how the state employs various technologies (e.g. statistics, map making, etc.) to shape both the population and individual actions in order to meet specific goals (Foucault, 2007 [1978]). Agrawal (2005) applies the idea of governmentality to the natural domain, termed environmentality, to show how knowledge, power, institutions, and subjectivities play out in the regulation and preservation of the environment. For example, the NHPA offers agencies a framework for making land management decisions that incorporates public input; however, the regulations require a western perspective of the land (e.g., the necessity of boundaries, sole proprietorship, etc.).

Local communities directly affected by exclusionary policies began to resist such conservation efforts that limited their access to places and resources (Vaccaro et al., 2013:275, 262-263). In response, conservation efforts in the 1990s increased the inclusion of local

communities in the management of an area (Kalamandeen and Gillson, 2007; Borgerhoff-Mulder and Coppolillo, 2005). This model was a direct outgrowth of the 1960s movement to increase public participation in land management decisions, expanding from merely raising attention to the issues to active participation in the management (Reed, 2008; Force and Forester, 2002). Many social and environmental scientists support a co-management model as being more socially just and environmentally sound (Brockington et al., 2008; Borgerhoff-Mulder and Coppolillo, 2005; Vaccaro et al., 2013; Hayes and Ostrom, 2005). More specifically, co-management increases local populations opportunity to access benefits in how the land is used (e.g. sustainable growth, increased ability to protect certain places, etc.), and may lead to greater biodiversity and habitat protection. Borgerhoff-Mulder and Coppolillo (2005:48) offer Nepal's Annarpurna Conservation Area Project (ACAP) as an example in which increased local participation in land management decisions led to better habitat protection and benefits to local communities. The authors note that the government, instead of its usual practice of removing local inhabitants from a large tourist area, engaged communities to help decide the various ways ACAP will be zoned for local use, wilderness protection, and tourist activities.

Despite this growing trend in collaborative management, the fortress model remains a formidable paradigm in conservation policy (Brockington and Duffy, 2011; Vaccaro et al., 2013). For instance, the Wilderness Act has "the strongest preservation oriented mandate of any of the federal land management laws" and the National Park Service and U.S. Fish and Wildlife Service have dominant-use statutes that encourage preservation centered directives (Glicksman, 2014:448). These policies and mandates do not necessarily preclude collaborative management. Furthermore, federal policies and negotiated agreements between tribes and agencies may encourage more cooperative relationships even with agencies with dominant-use statutes.

Therefore, while tribes have been able to increase their presence on ancestral lands through collaborative management with federal agencies, federal policy and practices can still limit their access especially with dominant-use agencies (Ruppert, 2003).

Practice theory may help explain how implementation of regulations (such as the NHPA and NEPA) and the willingness to co-manage the land can vary both within and among agencies. Practice theory looks to understand the "relationship between the structure of society and culture on the one hand, and the nature of the human action on the other" (Ortner, 1989:11). In particular, practice theory analyzes how actors work within societal structures to both reinforce and transform the structures (Rouse, 2007; Ortner, 2006). Political ecology increasingly employed practice theory in order to better understand how the interplay of societal structures and agency (an individual's ability or intention to act) relate to power dynamics of environmental issues and practices (Paulson et al., 2003; Biersack, 2006). Within practice theory, Sherry Ortner's explanation of "serious games" may be especially relevant for analyzing use of the NHPA for TCPs. Ortner's (2006) serious games concept explains how both dominant and subordinate groups exercise agency in order to pursue particular projects based on their own goals and desires. The author further emphasizes that these projects are culturally constituted, based not only on the influence of domination and resistance, but also other cultural values and social dynamics. Serious games may show how the NHPA regulations and federal agencies' practices can constrain the players (e.g. federal employees, tribes, and stakeholders), while the players also constantly challenge the regulatory structures to advance particular agendas.

There are a few key ideas important to understanding the serious games concept. First, serious games can have serious results. Ortner (1996:12) recognizes that these games often include important issues regarding power and inequality that can have significant impacts on real

life high-stake issues. For instance, whether development project adversely affecting a TCP may go forward. Second, serious games are like games of play (e.g. board games) in that the rules of the game may constrain and guide peoples' actions, thus reinforcing the overall structure. However, in serious games, the rules of the game are always in play and subject to revision (Talle, 2007:351-352; Ortner, 2006:149). Thus, understanding the operative rules in a federal land regulatory scheme may help in elucidating how certain actors may be constrained (e.g. federal employees required to take particular action because of agency policy or management directives), and in what ways the rules are being challenged and modified (e.g. an agency, commercial developer, and tribe contesting the meaning of early consultation, as required by the regulations). Third, an actor often has many games at play, which can influence how an actor experiences the constraint of the rules, as well as how they may transform them (Beaulieu, 2010:63; Ortner, 1996:19). Finally, agency (intentional action) is in large part the production of and subject to the social interactions and webs that produced it (Ortner, 2006:151-152). These key concepts for serious games will be helpful in unpacking how various actors navigate the complex regulatory structure regarding management of American Indian ancestral territories.

III. The NHPA: Legal Context and Pertinent Provisions

Congress enacted the National Historic Preservation Act in 1966 to encourage federal agencies to be leaders in historic preservation by considering historic properties in their decision making process (ACHP, 2012). Since the statute's enactment, Congress intended TCPs to be eligible as historic properties subject to the NHPA (King, 2003:21-35).[2] Despite this, federal agencies continually overlooked TCPs as eligible for the National Register of Historic Places

[2] Agencies can evaluate a place as eligible for the National Register without formally listing the place on the National Register. The places that are evaluated as eligible should be afforded the same level of consideration under the regulations as those places that are listed (36 CFR 800.4(c)(2)).

(National Register), restricting interpretation of historic properties to the built environment and places of academic interest (Smythe, 2009; King, 2009; King, 2003). In response, the NPS published National Register Bulletin 38 in 1990, which states that culturally important landscapes (labeled as TCPs for the first time) are eligible for the National Register, regardless of whether buildings or other culturally derived materials are present (King, 2003; King, 2005; King, 2009). However, recognition of TCPs as historic properties remained contentious in the early 1990s, due to the Forest Service, Bureau of Land Management, Bureau of Indian Affairs issuing policies that interpreted Bulletin 38 as only applying to the NPS (King, 2003:35). Congress accordingly amended Section 101 of the NHPA in 1992 to explicitly include American Indian and Native Hawaiian traditional and sacred lands as eligible for the National Register (Hutt, 2009; King, 2003). The TCP concept is not limited to American Indian traditional places, but is also an appropriate concept for other communities who value areas of cultural importance and not just the buildings located therein (e.g. Bulletin 38 mentions German Village in Columbus, Ohio or Chinatown in Honolulu, Hawaii) (Parker and King, 1998). Nevertheless, American Indian tribes use Bulletin 38 more than other communities (King, 2005).[3]

A community may see a place as a TCP based on its values and traditions, such as an important place relating to cosmology, ceremonial practices, or harvesting. While Bulletin 38 considers the community the expert in asserting the tangible and intangible characteristics that constitute the TCP, there is also an overlay of legal requirements that a community must show a

[3] I attempted to gather information on the number of American Indian TCPs evaluated as eligible for the National Register. Unfortunately, I could not obtain this information in part due to some SHPOs having a high volume of historic property records, which are organized in a way where I could not readily identify whether the historic property was an American Indian TCP. Additionally, some SHPOs limit general public's access due to privacy or confidentiality concerns.

place meets in order for a TCP to be considered eligible for the National Register.[4] Generally, a TCP that is National Register eligible must be a place linked to "cultural practices or beliefs of a living community that (a) are rooted in community's history, and (b) are important in maintaining the continuing identity of the community" (Parker and King, 1998). Furthermore, the TCP must meet various criteria and not fall under specific exclusions found in the regulations in order to be considered a historic property eligible for the National Register (King, 2003).[5]

For this research, I identified three major requirements within the NHPA regulations and associated policies that presented cross-cultural issues in the designation, and subsequently the management, of TCPs as historic properties: category of historic property, integrity of TCP, and defining the TCP boundary. One area of contention in applying the NHPA to TCPs is that the TCP must meet at least one of the four criteria listed under 36 CFR 60.4. Evaluation of TCPs for eligibility to the National Register primarily rely on the first two criteria (King, 2003:167-168). The first criterion allows for recognition of places connected to events or patterns of events, such as properties connected to traditional events or ceremonies (36 CFR 60.4(a)). The second criterion recognizes properties associated with important people, which includes deities that may play an important role within a culture (36 CFR 60.4(b); Parker and King, 1998; King, 2003). A place must retain its integrity to be eligible for the National Register in that if a place has been developed or otherwise altered over the years then it still retains the characteristics that made it significant to begin with (King, 2004). Boundaries are necessary in order to list a place in the National Register (McClelland, 1997). The regulations for Section 106 incorporate the

[4] In regard to federal land, generally a federal agency with concurrence from the SHPO, can evaluate a TCP as a historic property eligible for the National Register without formally listing the place in the National Register. Furthermore, if an agency and SHPO fail to evaluate a TCP as eligible for the National Register then a tribe can ask the ACHP to request a determination of eligibility from an agency's official (36 CFR 800.4(c)(2)).

[5] For more discussion regarding regulatory limitations on historic property nominations see King (2004), pages 118-125.

regulations for National Register criteria regulations, including the need for specific boundaries (36 CFR 800.4(c)(1)). However, King (2003:169-174) argues that agencies can employ Section 106 for TCPs without getting into detailed discussion about setting boundaries for a place. Although, he further explains that those who document historic properties often think there is a requirement for distinct boundaries in determinations of eligibility.

A majority of TCP evaluations as historic properties occur as a result of an agency triggering Section 106 of the NHPA through actions that potentially adversely affect historic properties. Section 106 requires all federal agencies to account for actions that adversely affect historic properties and to allow a reasonable opportunity for the Advisory Council on Historic Preservation (ACHP) to comment (16 U.S.C. 470(f); King, 2004). While the focus of my research is on federal actions taken on federal lands, Section 106 and any related regulations are also applicable to agencies overseeing projects on non-federal lands (e.g. actions requiring a federal permit or using federal funding).

Generally, the regulations require agencies whose actions may adversely affect historic properties to identify such places and consult with all pertinent parties, including other agencies (federal, state, and local), tribes, and private parties associated with the property (Smythe, 2009, see generally 36 CFR Part 800). The regulations explicitly include tribes in the consultation process for places affecting their traditional territory, noting the special expertise tribes have regarding these places (36 CFR 800.4(c)(1)). Adverse effects to TCPs include any direct or indirect effects that alter any of the historic property's characteristics that make it eligible for inclusion on the National Register (36 CFR 800.5(a)(1)).[6] The agency must determine through

[6] The regulations and Bulletin 38 give a few examples of adverse effects including physical damage to the property, change in character, neglect, transfer of the property out of federal ownership or control without legally enforceable restrictions to maintain the property's characteristics (36 CFR 800.5(a)(2); Parker and King, 1998).

consultation whether the project's area of potential effects will adversely affect a historic property (36 CFR 800.4). The consultation process is essential for evaluating whether there is an adverse effect, because even if the agency undertaking the project does not perceive an adverse effect, the consulting parties may find otherwise (King, 2004). Adverse effects do not have to directly affect the property, but can also come in the form of visual, auditory, and atmospheric change (Stapp and Burney, 2002; King, 2003). If an agency identifies an adverse effect then it must continue consultation in order to find solutions that avoid, minimize, or mitigate the adverse effect (36 CFR 800.6; King, 2004). However, an agency can generally proceed with an action that adversely affects a TCP even if a tribe disagrees with the agency's management decisions, unless the project affects tribally owned land (King, 2004). Although the NHPA affords tribes a platform to voice their input on managing a TCP, there is generally no recourse for tribes when agencies approve projects affecting TCPs that go against tribes' values (Alexander, 2012). Consequently, the NHPA reinforces the power imbalance between tribes and the federal government by giving federal agencies ultimate authority on management decisions regarding TCPs on the lands agencies manage.

The NHPA is a land management statute that ensures all federal agencies consider important places in their decision making process (Smythe, 2009:14-15), but the statute does not guarantee a consistent approach to managing historic properties. The actual management practices will vary according to the federal agency charged with administering the TCP. Agencies' management practices reflect the different directives of the agencies, for example U.S. Forest Service's multi-use management versus U.S. Fish and Wildlife Service's emphasis on preservation with its dominant-use mission (U.S. Forest Service, n.d.; U.S. Fish and Wildlife Service, n.d.; Glicksman, 2014). Since there is not a prescribed approach to managing TCPs, my

goal is to analyze the various contextual factors that may influence the consultation process and management of TCPs. Using a political ecology theoretical lens, I look at how these factors lessen the power imbalance between federal agencies and tribes regarding TCP decisions.

IV. Research Design

i. Data Collection

The purpose of my research was to evaluate the historic property designation and management process for TCPs found eligible for the National Register, in order to inform on contextual factors for the Southwest and Pacific Northwest and best practices for American Indian nations and federal land managers. In particular, the impetuous for my research was in part to assist Dr. Jeremy Spoon and Nuwuvi ("the people" of Southern Paiute) collaborating to reassert the Nuwuvi presence on their ancestral lands.[7] Nuwuvi traditional territory encompasses the southern Great Basin and northern Mojave Desert, including parts of Nevada, Arizona, California, and Utah (Spoon et al., 2015; Spoon and Arnold, 2012). My research analyzes the use of the NHPA in facilitating consultation with federal agencies through the legal framework provided in the regulations. This will help inform Nuwuvi, other tribes, federal agencies, and individuals[8] involved with TCPs on best practices (as identified by the research participants) regarding consultation of these places. I also aim to add to the larger discussion regarding

[7] Since 2008, Dr. Spoon, Pahrump Paiute Tribe Chairperson Richard Arnold, the Nuwuvi Working Group, and federal land managers have worked together to increase opportunities for Nuwuvi's presence on their ancestral land. The Nuwuvi Working Group consist of tribally selected representatives from seven Nuwuvi nations (Spoon and Arnold, 2012).

[8] Individuals that are not associated with a tribe or agency, but are still involved with consultation, may include SHPO employees, commercial developers, cultural consultants (e.g. cultural anthropologists, archaeologists, etc.), private property owners, and non-American Indian groups that still have cultural affiliation with the land, Although I was able to include some of these additional viewpoints in the research, future research should particularly include individuals or groups who have alternative viewpoints than tribes in how to manage TCPs, such as commercial developers.

collaborative approaches to reasserting indigenous peoples' presence on ancestral lands now governmentally managed.

One of my main concerns in this project is that it is ethical in its goals and methods. A growing trend in anthropological thought holds that research should not just be theoretical in its purpose, but also be relevant and useful to the population targeted in the research (e.g., Kievit, 2003; Nesper, 2011). My goal in this research was to not be extractive in gaining information, particularly with tribes, which scholars and researchers (predominantly Euro-American) historically exploited for their knowledge (Kievit, 2003; Smith, 1999). My other ethical concern includes the inherent power imbalance between researcher and American Indians (Smith, 1999), and my exposure to confidential information regarding ancestral places and a tribe's potential desire to keep information pertaining to particular places secret. Information regarding sacred landscapes is principally sensitive, because disclosure of the information may either diminish the power of the sacred area or lead to exploitation of the area by outsiders (e.g., overharvesting medicinal plants or traditional foods such as huckleberries) (Stapp and Burney, 2002; King, 2003). I tried to address these issues through Informed Consent (see Appendix B) and an open dialog with research participants regarding what is appropriate to include in the research.

I based the research design on a mixed methods approach, particularly composed of core and supplemental qualitative components (Morse and Niehaus, 2009). A mixed methods approach may be more helpful than a single method design in understanding a complex issue. Research based on a mixed methods design may give a better perspective of the issue through methods looking at different scales[9] or different aspects of the issue. The core component is the

[9] Important issues at the micro level may not be apparent at the macro level due to the dominance of other more common issues, while issues viewed at the micro level may not highlight broader patterns. For instance, research on the macro level may identify that a particular piece of legislation disproportionately impacts different ethnic groups

primary part of the research that meets academic standards of adequate research rigor and sufficient methodology, while the supplementary component informs on the issues identified with the core component but does not independently meet academic standards (Morse and Niehaus, 2009). Both the core and supplementary research components focused on three units of analysis: tribes (populations who hold the TCP culturally significant), federal land managers (populations charged with managing TCPs), and TCPs (the physical characteristics and documents that are considered in the historic property designation and management of a TCP). I chose the units of analysis in order to focus on the relationship between federal agencies and tribes. However, further research should include perspectives of individuals that may be potentially in opposition to tribes' views of proper land management (e.g. commercial developers, recreationists, groups supporting tourism activities, etc.). I conducted the data collection from July 2014 through December 2014.

The core component of my research is a comparison of five TCPs in the Southwest and Pacific Northwest. The TCPs in the case studies included: Mount St. Helens (Washington), Mount Shasta (California), Medicine Lake Highlands (California), Cave Rock (Nevada), and Toquima Cave (Nevada) (see Appendix C for site descriptions). I chose two case studies in the Southwest in order to analyze contextual factors that may be especially relevant to Nuwuvi. The three case studies in the Pacific Northwest helped provide site-specific information for the overall analysis regarding TCPs, and also helped control for regional differences in TCP nominations and management. I also selected the TCPs based on the resource type associated with the places, including TCPs with mountains, water sources, and culturally modified resources such as petroglyphs and pictographs. Finally, I ultimately chose the sites using

or communities, while a microscale analysis may give insight on how local communities utilize or implement such legislation.

convenience sampling. Convenience sampling consists of choosing research participants based on who is willing to engage in the research (Bernard, 2011:147). I therefore chose the TCPs based on my ability to contact the individuals involved with the TCPs, thus resulting in all of the TCPs being on National Forest land.

Research for the five TCP case studies included semi-structured interviews of eleven key consultants (especially of the tribes and federal agencies involved with the TCP) (Figure 1), site visits to the Pacific Northwest case studies in my research, and a review of legal documents, grey literature, and other publications related to the TCPs. Bernard (2011:150) defines key informants as individuals who understand the information relevant to the research, are able to speak to at least some of the information needed, and are willing to participate in the research. In particular, for my core component I sought viewpoints of individuals formerly or currently involved in the historic property designation and management of TCPs in the case studies. Semi-structured interviews have predetermined questions that act as a guide to get at particular issues while allowing for flexibility in following up on specific topics the interviewee raises (Bernard, 2011:157-158). My semi-structured interview questions (Appendix D) touched on personal experiences in working with TCPs, as well as insights on other relevant policy and perceptions in the usefulness of the NHPA for TCPs. I posed additional questions in line with their responses as the interviews



Figure 1: Researcher Kate Monti Barcalow (left) interviewing the Cowlitz Tribe's ecologist Nathaniel Reynolds (right) during their site visit to Mount St. Helens with Forest Service employee Rick McClure (picture courtesy of Rick McClure).

unfolded. I tailored follow up questions that were specific to the TCP case studies based both on the interview responses and any previous conversations I had with the interviewee, as well as any literature relating to the TCP. The documents I reviewed relating to the TCP case studies varied due to the different actions taken with the TCP, and included such documents as National Register nominations, court cases, Records of Decisions, Environmental Impact Statements, literature produced the federal agency about the TCP or National Forest, and management plans.

The supplementary component of the research is fourteen semi-structured interviews of individuals with experiences using the NHPA for the designation or management of TCPs, a site visit to two traditional Nuwuvi places (the Spring Mountains and Black Canyon in southern Nevada), and participant observation of federal-tribe consultation between Nuwuvi and federal agencies in Nevada. The fourteen interviews for the supplemental component included tribal members, THPOs, tribal employees, federal employees, employees for Oregon and California's SHPOs, and cultural resource consultants. The federal employees for the supplemental component included federal land managers and independent advisory councils, including Advisory Council on Historic Preservation, Fish and Wildlife Service, National Park Service, and U.S. Forest Service. I interviewed a person from each these agencies in order to get a basic understanding of potential differences between agencies in their understanding and employment of the NHPA. I also conducted five of the fourteen interviews with individuals with national experience in order to identify some of the regional issues against issues seen on a national scale. A complete list of all twenty-five interviewees with a brief description of their professional or personal experiences is in Appendix A. My analysis of for the supplementary component is limited by the small sample size for the interviews, and thus further research should explore the heterogeneity of federal employees' experiences and opinions both within and among the

agencies. Finally, I accompanied Nuwuvi, federal employees, and additional stakeholders in their visit to an important Nuwuvi ancestral place, Black Canyon, located in Pahranagat Valley in Nevada. During the visit, I assisted Dr. Spoon and Mr. Arnold in their facilitating consultation among Nuwuvi, federal employees, stakeholders regarding collaboratively designed interpretive exhibits and visitor centers and the potential of nominating a Nuwuvi TCP to the National Register.

ii. Data Analysis

My initial method for data analysis consisted of a grounded theory approach. I employed a grounded theory approach as outlined by Bernard (2011:435), in that as themes emerged during the fieldwork, I used those themes to inform and shape the future interviews. More specifically, during my fieldwork, I took notes and did some transcriptions of my interviews, in order to use inductive coding to identify and focus in on general themes. For instance, as individual actors became the predominant determining factor for effective consultation regarding TCPs, I started to focus on the skills and personality traits that facilitated good relationships and corresponding best practices. I primarily used inductive coding to help me identify recurring general themes in the interviews. Inductive coding is a systematic approach for analyzing raw data using research objectives or questions in order to ascertain general themes inherent in the data (Thomas, 2006). This is different than deductive coding, which looks to test data against presupposed theories or assumptions (Thomas, 2006; LeCompte and Schensul, 2013). However, research is rarely purely inductive or deductive, and instead consists of a recursive process where the researcher moves between the data and developing codes to refine the analysis (LeCompte and Schensul, 2013). For my research, I used a political ecology lens in the inductive coding to identify and

understand the different contextual factors that support or hinder a mutually agreeable evaluation of a TCP as National Register eligible, as well as the corresponding management decisions.

As identified by research participants, mutually agreeable terms include issues regarding TCPs where both tribes and the federal land manager benefitted (e.g. tribes and federal land managers receiving grants for land management practices), either tribes or the federal land manager benefitted and this was either uncontested or encouraged by the other group (e.g. a tribe's exclusive access to specific ceremonial areas during certain times of the year), or a negotiated agreement was reached (e.g. a negotiated boundary for the TCP). Through the iterative grounded theory approach I noted various recurring contextual factors that support or obstruct mutually agreeable terms. Once I completed all interviews, I analyzed these initial themes in order to note overall patterns in the data, ultimately leading to the three major themes discussed in the next section.[10]

V. Results and Discussion

The NHPA inherently favors federal agencies' authority in addressing issues affecting TCPs; however, agencies increasing tribes' presence in the decisions making process may facilitate better consultation and ability to resolve problems. In the following sections, I discuss the three major emergent themes I identified that may aid or impede resolution of issues specific to TCPs in the Southwest and Pacific Northwest (see Appendix E for summary data points for each case study). These three major themes include: the importance of individuals in effective consultation versus additional policy, understanding the tribe's view of landscape where the TCP is located, and taking a proactive approach. In particular, I argue that the three themes support a

[10] For example, initial reoccurring themes I noted include issues in defining TCP boundaries and the failure of some agencies in seeing the interconnectedness of places. These were later grouped into the final theme of incorporating a landscape approach into consultation regarding TCPs.

collaborative approach for managing TCPs and may lessen the power imbalance inherent in the NHPA. Although I discuss these themes in three distinct sections, they can and often do overlap. For example, a federal employee who has a good relationship with tribes will often have a proactive approach either in consultation or even in looking for co-management opportunities.

i. The Proper Skill Set

By and large, research participants identified the NHPA as the main legal mechanism that tribes and federal agencies turn to for resolving issues regarding important ancestral places. Many research collaborators asserted that except for a radical overhaul of the current regulations dealing with American Indian traditional territories, additional legislation would do little to change the decision making process for these lands. Many collaborators used the NHPA over other legislation or federal policy mainly because of the statute's extensive framework for consultation that is not present with other legal mechanisms. In particular, research participant Tom King noted that:

> The great value of Section 106 is that it provides for consultation: consultation to agreement. It has a structured way that if it's *handled properly* that everybody gets to sit down at the table and try to negotiate about what's important, and how those important things ought to be treated. That is a tremendously powerful tool that really no other federal law that deals with this kind of thing has (emphasis added).

Even though the NHPA may offer a framework to approach issues regarding TCPs, every interviewee for this research asserted that the individuals involved in the decision making process as being the lynchpin to successful consultation. Although the NHPA outlines a required process for consultation, agencies still have a lot of room in how they implement the regulations and ultimate decision regarding management (Alexander, 2012; Horgan, 2011). For example, the regulations require early consultation (36 CFR 800.1(c)), yet do not give an explicit time

period that would constitute early consultation. Many interviewees insisted consultation should be flexible and adaptive in order to better address issues and factors that may be particular to a project, consulting parties, or landscape. Given this flexibility in the regulations, the individuals who implement regulations thus become essential to actuating proper consultation that addresses and resolves issues regarding a TCP. Furthermore, Ornter's (2006) description of the serious games individuals employ in order to advance particular projects, may explain how federal agencies, tribes, developers, or other stakeholders may use the flexibility in the regulations in order to advance their agendas.

Some research participants thought that additional regulations giving federal agencies more latitude in making management decisions would be helpful. However, those collaborators believed that effective consultation still came down to how the federal employees decided to employ the regulations. Most research participants concluded that effective consultation requires agencies going beyond meeting the minimum requirements in regulations in order to build meaningful relationships based on trust and open communication. As noted by research collaborator Doug Deur, Associate Research Professor in the Portland State University Department of Anthropology, good relationships between agencies and tribes "requires that [agencies] are actually breaking away from the letter of the regulations, the policies, the laws at some level and going beyond them in terms of trying to develop a meaningful rapport with tribes over the long term." Agencies may facilitate successful consultation regarding a TCP when a tribe's concerns are properly discussed, considered, and resolved where possible (36 CFR 800.16(f); King, 2003). I thus assert that federal employees' intent and actions for consultation are important for diminishing the inherent power balance in public land management statutes and

policies, most notably the NHPA, where the federal government has the ultimate decision making power.

The power imbalance is particularly evident with the national government's increased control over the land and its subjects through conservation measures. Agrawal's (2005) concept of environmentality helps unpack how conservation measures are closely related to a nation's state-making objectives through increased authority over its territory and citizens. In particular, Vaccaro et al. (2013:260) assert that a state justifies its management actions by linking conservation of nature with the preservation of a national identity. Consequently, through administrative measures related to conservation, a nation can legitimize and expand its authority. This is directly reflected in the NHPA's purpose to assist agencies in making decisions that may affect places of national value. In light of this, I suggest that federal agencies adopting practices that increase effective communication and cultural awareness can lessen the power imbalance between tribes and federal agencies for consultation regarding TCPs.

A strong relationship between an agency and tribe can minimize conflict or potential challenges to an agency's actions. Specifically, many collaborators believed a strong relationship can be helpful if a tribe's view of proper use of a place cannot be completely incorporated in the management of a TCP because of agencies having to comply with laws that allow other uses.[11] The interviewees generally identified that better relationships between tribes and federal agencies necessitates open communication, as well as federal employees cultivating a deeper understanding of cultural values. For example, research participant John Maher, Heritage Resource and Tribal Relations Program Manager for the Lake Tahoe Management Unit,

[11] Individuals and organizations who have a different intended use of the land (e.g. recreationists or developers) have a legal right to pursue their interests and be a part of the NHPA consultation process (36 CFR 800.2(c)(4) and 36 CFR 800.2(c)(5) . Further research should look at the viewpoint of recreationists or commercial developers, and how this relates to effective consultation for all parties involved.

explained that there were some major disagreements between the Forest Service and Washoe Tribe in permitting rock climbing to continue at Cave Rock. Despite this, Maher thought that the strong relationship between the agency and Washoe Tribe was crucial in helping to convey to the tribe that the agency was making the best legal decision it believed possible at that time in authorizing rock climbing. After all, during the consultation process agencies can be engaged in serious games not only with tribes wanting to influence the management process, but often also with stakeholders who may propose actions counter to tribes' views on the proper management or use of the land (such as rock climbing).[12] Maher furthermore believed that the good rapport between the tribe and agency prevented termination of the consultation process during this time, allowing the agency and tribe to continue conversation that ultimately resolved management issues.

Research participants overwhelmingly emphasized that effective consultation hinges on the individuals involved in the consultation process. While each tribe is different and will require different consultation protocols (Stapp and Burney, 2002), research participants identified several skills for federal employees that facilitate good consultation, which fall under the broad themes of effective communication and cultural competency. In particular, good communication skills identified included agencies fostering an environment where agency staff and tribal employees get to know each other and feel they can communicate openly. In part, this requires agencies to make a good faith effort in communication (discussing early and often), face-to-face communication, listening and truly considering a tribe's concerns, show an ability to

[12] It is important to note that tribes may also disagree with other tribes or within their own tribe on proper land management. This may increase the complexity in resolving issues during the consultation process (Dustin et al., 2002:81).

properly handle confidential information, and be transparent in actions intended on the landscape.[13]

Several collaborators noted that when agencies communicate early in the consultation process, they create a more collaborative environment between tribes and federal agencies and ensure federal agencies and potential developers consider major issues in the design. The interviewees believed that timely communication consisted of agencies contacting tribes when they first become aware of a potential project that might affect a TCP. For example, Morning Star Gali (Pit River Tribe member and current THPO) and Michelle Berditschevsky (former Executive Director of the Mount Shasta Bioregional Ecology Center and environmental coordinator for Pit River Tribe) noted that federal agencies did not consult with tribes until after renewal of the leases had already been awarded and proposals for the highly contested Fourmile Hill and Telephone Flat geothermal power plants for Medicine Lake Highlands were already agreed upon with the developer Calpine Energy. Furthermore, interviewee King asserted that BLM failed to look at the environmental impacts in renewing the leases, in part because mineral leasing policies do not require agencies to make substantial environmental reviews. This led to years of consultation and facilitated settlement discussions regarding the projects. In 2000, the Department of Interior, BLM, Forest Service, California SHPO, ACHP, and Pit River Tribe formalized a Memorandum of Agreement (MOA) pursuant to the NHPA process regarding the geothermal projects. The MOA denied the Telephone Flat project, but allowed the agencies to proceed with Fourmile Hill even though the tribes preferred denial of that project.

[13] Tribes may chose not to consult on a particular project (see discussion on confidentiality below); however, where tribes are involved in consultation effective communication requires tribes to also make a good faith effort to contact and interact with federal agencies. Federal agencies are statutorily obliged to facilitate consultation, and often have more funding and resources to consult. Thus, agencies must consult with tribes, and accommodate when possible, on the best communication practices between tribes and agencies.

Berditschevsky explained that despite objections from the tribes and ACHP the Bush Administration reversed the decision regarding denial of the Telephone Flat project in 2002. In 2006, the U.S. Court of Appeals for the Ninth Circuit overturned the Fourmile Hill lease renewals eight years after BLM's approval (Pit River Tribe v. U.S. Forest Service, 469 F.3d 768 (9th Cir. 2006)). Although Calpine Energy ultimately withdrew its original plans for Telephone Flat and Fourmile Hill, the geothermal developer still has the original leases, and plans to pursue geothermal development.[14]

Research collaborator Berditschevsky believed that agencies create situations of potential conflict between agencies, tribes, and developers when agencies make irrevocable promises to developers, through approval of an action or issuing a permit, prior to discussing the project with the tribes. Gali noted that Pit River is not generally opposed to development, but that an agency should discuss a project "[b]efore it even gets onto paper, do a walk-through and see what sensitive resources are in that area that we may have concerns about. Talk to our elders. Bring our cultural reps out there and see what they think about it […] I think there's ways that things can be done that are still in line with that respect to an environment." Practice theory explains how there is never just one game at play, and that these games are often interconnected (Beaulieu, 2010:63; Ortner, 1999:150). Tribes may therefore not always oppose development projects, particularly when the project may benefit the tribe (Alexander, 2012:906-907). Thus, through open communication agencies may find partners in projects instead of opponents. Berditschevsky believed that in other issues agencies subsequently improved the consultation

[14] Berditschevsky explained that the original leases were not being challenged because the agencies did not notify the tribes of the original issuance of the leases in the mid-1980s, and thus the right to litigate the original leases lapsed due the statute of limitation. She further emphasized that litigation challenging renewal of leases for Telephone Flat and other potential geothermal projects in Medicine Lake Highlands remains unresolved. Furthermore, Berditschevsky noted that currently, Calpine Energy unilaterally proposed a project of 480 megawatts on its 66 square mile leaseholds in the Medicine Lake Highlands, which is nearly a fivefold increase over the original 49 megawatt projects.

process by approaching tribes earlier in the process. The tribes demanding earlier and better consultation demonstrate how actors (such as the tribes) can push against the rules of a serious game (agencies' culture of late and infrequent consultation) to transform the rules (earlier and more frequent consultation).

In North Dakota, tribes asserted the importance of early consultation through their proposal of a programmatic agreement between tribes and agencies regarding future highway development (ACHP, 2015; NCHRP, 2011). A consortium of tribes proposed a programmatic agreement that facilitated early discussion of potential issues prior to the development of transportation projects, which agencies ultimately consented to in 2006 (NDDOT et al., 2006). Important provisions of the agreement include formalizing a Tribal Consultation Committee that meets twice a year to discuss potential projects and policies, encouraging on-site visits with tribes and agencies, and flexibility in the form of consultation (e.g., allowing other tribes to join the Tribal Consultation Committee, permitting tribes to bring elders or other cultural consultants to advise during meetings or on-site visits, etc.) (ACHP, 2015; NDDOT et al., 2006). ACHP (2015) asserts that this not only assisted agencies in consulting early and avoiding conflict with highway projects, but also opened lines of communication that create better understandings of culturally important places and values. Agencies consulting early on a project can therefore maintain better relationships with American Indian nations, as well as minimize costs associated with redesigning the project and potential legal challenges to the project (Parker and King, 1998:5; Alexander, 2012; King, 2003:197-198, 235).

The federal government generally recognizes that it has a unique obligation to consult with tribes as governmental entities, but often circumscribes tribes' authority to less than that of an international sovereign nation (and at times non-existent). However, over the past five

decades various federal agency initiatives, court decisions, and presidential and congressional actions expanded tribal authority and increased federal agencies' obligation to consult (Jensen, 2012). Numerous consultation handbooks prepared for and by federal agencies recognize the federal agencies' important obligation to confer with tribes, and that the consultation process generally improved over the years. Despite this, many of the handbooks assert that federal agencies have significant areas where they can improve consultation practices, particularly through better communication and cultural awareness (e.g. Department of Labor, 2012; NATHPO, 2005; University of Oregon, 2011; Natural Resources Conservation Service, 2009; and Louis Berger Group, 2013). Accordingly, better relationships and mutually agreeable management decisions are more possible through federal agencies incorporating certain collaborative principles into consultation, most notably effective communication and cultural awareness.[15]

Political ecology examines how environmental discourse, generated through the entwinement of "power" and "knowledge" to produce "truths," appears to be inevitable or universal (e.g. what constitutes nature, the environmental status of a place, proper land management protocols, etc.) (Robbins, 2011; Agrawal, 2005). Robbins (2011:70) explains that those in authority use these "truths" to reinforce their positions of power. A collaborative approach can challenge this power structure by allowing for the *co*-production of knowledge through open dialogue across differences (e.g., class, gender, ethnicity, economic status, etc.) (Phillips et al., 2013). In particular, collaboration is a dynamic process that generates new and predominantly actionable knowledge and lessens power differentiations (Phillips et al., 2013;

[15] Further research should be done regarding how tribes' knowledge of the regulations and how agencies operate affects the consultation process. Just as federal employees who cultivate cultural awareness tend to have a better relationships and understanding of the balancing act agencies play in land management.

Smith, 1999; Spoon, 2014; Spoon and Arnold, 2012). I suggest that the skills the interviewees identified support a collaborative approach with the consultation process through an open dialogue, which will better address land management issues and power imbalances between tribes and the federal government.

Frequent consultation between federal agencies and tribes is important not only in building stronger collaborative relationships through increased communication, but also strengthens the American Indian nations' authority over cultural and ecological knowledge of a place. Many interviewees, mainly individuals who are members or employees of tribes, recognized that federal agencies asking a tribe about a particular place only once is not sufficient, even if it is an area previously consulted about regarding similar issues. In part, this is because most research participants recognized that tribes may be reluctant to disclose cultural or ecological information because of cultural protocols or fear of misuse of the information. Cultural protocols include who can know the information and rules for the sharing of information. Many research participants recognized tribes' well-founded fear that general public may misuse culturally sensitive information to exploit places or resources. The general public may be able to easily obtain the information from agencies who are legally compelled to disclose the particular information or from agencies failing to follow confidentiality protocols for statutorily protected information (Stapp and Burney, 2002; King, 2003). Consequently, research participants noted that while a tribe may think the risk of disclosing facts about a place is not necessary for a particular impending project, the tribe may think it is worthwhile to share knowledge if the harm of the project outweighs the risk of divulging the information. Additionally, tribes may alter their stance on a pending project due to shifts in the communities' perceptions of harm, gaining supplementary information regarding a project, changes in political

leadership, and other changes that may influence a government's position. Executive Order 13175 requires agencies to implement policies that facilitate regular and meaningful consultation, in large part to recognize and encourage self-governance (Executive Order 13175, 2000; NATHPO, 2005). Furthermore, self-governance is essential in ensuring a tribe's ability to protect their culture and identity (NCAI, 2003). Accordingly, frequent consultation regarding TCPs gives tribes the opportunity to weigh the risks in sharing culturally sensitive information, therefore respecting tribes' authority and self-governance to decide their position on an issue.

Collaborators often noted trust as a basic requirement for a good relationship between governmental agencies and tribes. Trust is dependent not only on the individuals involved in consultation, but can also be reinforced through agency policy and practices. During the interviews, many tribal members, employees and consultants for tribes, as well as a number of federal employees mentioned confidentiality as a primary concern. Research participant Merv George, Hoopa Valley Tribe member and Forest Supervisor for the Six Rivers National Forest, noted that tribes still have a level of mistrust with agencies properly handling confidentiality. Similarly, Shawn Steinmetz, archaeologist and ethnographer for the Confederated Tribes of Umatilla, observed that some agencies seem to be more trustworthy with confidential information than others, and that once the information is released to the public it is difficult to impossible to retract that information. Federal agencies may face conflicting obligations in keeping information confidential, particularly when faced with the legal requirements of information disclosure under the Freedom of Information Act and National Environmental Policy Act. However, the NHPA offers a few of the broadest exemptions in disclosing confidential information that can be relatively easy to meet for TCPs eligible for the National

Register (Plaut, 2009)[16]. Despite this, King (2003:251) argues that the NHPA disclosure exemptions are not as protective as most agencies perceive them to be with the Keeper of the National Register having ultimate discretion regarding issues of confidentiality.

In order to address confidentiality issues, agencies should consult with tribes and the Keeper of the National Register to discuss the risk of potential disclosure of confidential information and in developing protocols that can adequately handle protection of confidential information to the ultimate extent afforded under Section 106 of the NHPA (ACHP, 2012; King, 2003). Research collaborator Steinmetz believed that the Oregon SHPO is particularly trustworthy with confidential information given the protocols in place. More specifically, Dennis Griffin, archaeologist for Oregon SHPO, explained that Oregon SHPO maintains confidentiality by keeping TCP information in a separate portion of the historic properties library, for which only Oregon SHPO archaeologist have keys. Furthermore, access to the TCP information requires written permission from the tribes.

Collaborators emphasized that federal employees must also have a basic understanding of the cultural values and workings of the tribal government, as well as the history of that tribe's relationship to the land, other tribes, the previous agency personnel, and the federal government in general. Research participants identified a few significant steps federal employees can take to build cultural competency, and better relationships in general.[17] One of the most important actions identified is meeting face-to-face on a frequent basis that goes beyond mandated or prescribed meetings. Furthermore, participants suggested that federal employees should

[16] Plaut (2009) further discusses how places that do not qualify for the National Register would not be afforded the same level of protection for confidential information, and that this may hinder discussion with agencies. Plaut suggests extending the NHPA confidentiality protection to all places potentially eligible for the National Register.

[17] A couple of interviewees asserted the importance of tribes also understanding regulations and how federal agencies operate. The research collaborators believed it would help tribes understand why agencies must take certain actions and to what extent agencies can promise particular actions.

organize meetings where American Indians feel comfortable talking, whether it is at tribal administrative offices or on a site visit. Research participant Griffin shared that federal employees should engage with tribes on extended site visits, which can be immensely valuable in instilling cultural appreciation in federal employees through immersion of a tribe's understanding of the land and extended conversation. Federal employees understanding the cultural and political contexts is important for ensuring effective communication and safe-guarding against cross-cultural issues that may occur in consultation. Cross-cultural issues include use of culturally inappropriate words (e.g. lumping tribes in with the term "the public" and thus ignoring tribal sovereignty), not accounting for a tribe's different perception of appropriate timing especially given a tribe's limited resources and personnel, and failing to understand general differences in forms of discourse (e.g. whether a prayer is typical prior to the meeting or elders need to be consulted prior to agreement) (Stapp and Burney, 2002; King, 2004; King 2003). Accordingly, federal agencies acknowledging and addressing cross-cultural issues can be helpful in minimizing misunderstandings and power imbalances (Martinez, 2006; King, 2003:237-245).

Several research participants also identified federal employee turnover as a major hindrance to building trust between federal agencies and tribes. Participants believed the issue is compounded by the fact that agency representation, and hence consultation, relies primarily on one employee. Continuity of relationship between tribes and the agencies helps to build trust and leads to much more productive consultation where difficult conversations over proposed actions or projects can be discussed, thus leading to less conflict and more mutually agreeable solutions. Additionally, high employee turnover can be problematic because of the education process associated with a new hire. Steinmetz explained that a lot of effort from the tribe's side goes into

educating a new federal employee, which can be very tiresome for the tribe. Research collaborator Will Reed, Regional Forest Service Heritage Program Manager for Intermountain Region, suggested that since many of these relationships between tribes and agencies rely on one federal employee, there should be overlap in employment between the former employee who has the relationship with the tribe and new employee. The overlap in employment accordingly provides opportunity for the new employee to learn more rapidly about the projects and relationships with the tribes without having to start at square one. Some research participants advocated that agreements between tribes and agencies, such as a programmatic agreement or a Memorandums of Understanding (MOU), can be helpful in dealing with federal employee turnover and difficult personalities. George agreed that MOUs can help minimize issues with employee turnover by giving a good framework of what to expect and what has worked in the past, but emphasized that an MOU is just a tool and the individuals involved still determine the success of consultation. This illustrates Ortner's (2006) understanding of practice theory that emphasizes how an individual's (federal employee) actions are not just the result of domination (regulations or MOUs), but are also occur due to players pursuing their own projects or agendas.[18] Select interviewees noted that the appropriateness of tribes and federal agencies using a formalized agreement regarding a particular project or consultation method is highly dependent on contextual factors (e.g. alternative protections in place, history of the relationship between a tribe and agency, etc.). The U.S. Forest Service's monitoring report (Report) assessing the Northwest Forest Plan from 1994 till 2008 also notes federal employee turnover as one of the major hindrances to effective consultation (University of Oregon, 2011:14-15). The Report

[18] Future research will have to explore the various serious games agencies pursue. Historic preservation is often one of many objectives agencies must fulfill. Furthermore, my research focused more on the interactions between agencies and tribes, as opposed to specific practices within a culture or tribe.

found that one of the major issues with staff turnover is the new employee's extensive learning process regarding particular consultation protocols or information about the tribe. Additionally, the interviewees for the Report identified MOUs or similar formal protocols as potentially helpful tools to deal with staff turnover, establish conflict resolution processes, streamline day-to-day conversation, and identify major management issues. I therefore suggest that federal agencies should look for factors that minimize employee turnover, while also lessening the effects of changes in staff by discussing with tribes the potential use of MOUs or other formalized protocols.

Several research participants directly and indirectly identified upper management's interest and willingness to cooperate as important to effective consultation. I define upper management to be anyone in a supervisory role not involved in the routine contact with the tribe, including direct supervisors all the way up to directors and heads of federal agencies on the national level. While employees charged with routine consultation have a large impact on building the necessary relationships in the consultation process, collaborators noted that upper management can be influential in the consultation process by hiring the proper employees who handle the routine communication in consultation, implementing policy, allocating funds or other resources, and making ultimate management decisions. For example, the management of Cave Rock and the decision to ultimately ban rock climbing did not happen until the Lake Tahoe Basin Management Unit changed Forest Supervisors. The new Forest Supervisor reevaluated the Forest Service's position to permit rock climbing, ultimately leading to the permanent ban on rock climbing as an appropriate action that meets the Forest Service's other legal mandates. The Forest Supervisor's decision for Cave Rock demonstrates how pivotal a supervisor can be in the consultation process regarding management of a TCP. This is in accord with a political ecology

framework that requires understanding how various political-social factors are influential at various interconnected scales, from the local level to the global stage (Mung'ong'o, 2009; Andersson et al., 2011). It also demonstrates that although regulations can constrain managers' options for action, there may be enough flexibility with the regulations for managers to pursue particular projects or agendas. Accordingly, a more complete understanding of land management practices with TCPs should consider the many decision making levels, the regulatory and social factors that influence decision making process, and how they relate to ultimate management actions.

One of the key decisions upper management can make is who they hire to handle the routine conversations for consultation. Research participants asserted that federal employees lacking requisite skills to work with American Indians, either because of poor communication skills or inability to appreciate and foster a cultural understanding of the tribes they work with, may substantially contribute to poor relations with tribes. Additionally, a number of collaborators felt these poorly trained federal employees often also fail to adequately grasp the concept of a particular TCPs or TCPs in general. Furthermore, interviewees felt this may be in part due to a federal employee's bias toward objects that interest professionals or fit into their own ethnocentric view of what should be considered important. Research collaborator Jan Hollenbeck, Heritage Program and Tribal Program Manager for Mount Baker-Snoqualmie National Forest, equated hiring someone with the necessary communication skills and cultural competency as to building a bridge and hiring not just any engineer, but one with experience and understanding of building bridges. The National Park Service published Bulletin 38 in 1990 to counter agencies' focus on culturally constructed materials that appealed to professionals (e.g. architects, archeologists, historians, etc.) as being the standard for places eligible for the National

Register (Parker and King, 1998; Smythe, 2009; King, 2009; King, 2003). While Bulletin 38 helped shift agencies' focus to places communities value, the tendency to evaluate places based on what professionals find to be National Register eligible persists (King, 2009). This issue might be in large part due to employees not having the requisite training or interest to facilitate effective consultation. Research participants commonly pointed to the issue that agencies often lump duties regarding tribal consultation in with federal employees' primary purpose of employment in overseeing compliance with other federal laws such as NAGPRA. Fiske (2008) notes that the federal government hires far more archaeologists than cultural anthropologists, and that federal agencies often hire archaeologists to comply with cultural resource management laws. Thus, federal employees heavily trained in archaeology may not have the skill set of a cultural anthropologist to work with extant communities. Future research should employ practice theory to further explore the various social and political structures that inform and constrain agencies hiring practices.

While agencies still tend to hire federal employees based on their archaeological or forestry skills with perhaps secondary or no emphasis on their abilities to work with living communities, agencies recognize the need to improve consultation with better trained employees (Department of Commerce, 2013; EPA, 2014; U.S. Fish and Wildlife Service, 2013). However, many research participants found trainings limited because while they were effective in increasing technical knowledge of the NHPA, they lacked adequate instruction on cultural competency. Research participant Rae Gould, Native American Program Specialist for the ACHP and member of the Nipmuc Nation, said a third to a half of attendees of the ACHP's tri-annual Section 106 trainings are new federal employees. Gould explained that while Section 106 trainings focus on the technical aspects of the law, the trainings do include instruction on cultural

awareness, fundamental American Indian history since Euro-American contact, and tribes' special sovereign status. Although Gould thought the trainings effective in teaching the technical information and in opening up trainees' minds to other cultural values, she explained that the effectiveness depends largely on attendees' willingness to understand and appreciate alternate viewpoints. Therefore trainees can leave with a basic understanding of Section 106 and even American Indian relations without cultivating a deeper appreciation of the importance of consultation or building better relationships. Research collaborator Hollenbeck found trainings to be useful, but thought it was not just one training that was crucial, but the repeated exposure to the ideas and values through multiple trainings and panels that has been effective. In recognition of the need of more accessible and frequent trainings beyond the ones the ACHP offers three times a year, Gould said that the ACHP is developing on-line trainings, webinars, and on-demand trainings.[19]

Generally, collaborators believed upper management should hire employees with the appropriate skills for effective consultation. Research participant George saw a change in the type of Forest Service employees hired. He believed that upper management recognizes the need to hire those with skill sets that can effectively engage with communities. George noted his own hiring as an example, since he did not consider himself a forester and instead had communication and facilitation skills. Lusignan (2009:40-41) also sees a general expansion of professions involved with TCP work to include individuals already equipped with the proper skill set to engage with communities about TCPs.

[19] The National Preservation Institute also provides training on the Section 106 process including providing for on-site training, seminars, and helpful tools on their website for those going through the Section 106 process, such as links to educational resources and a few templates for useful documents like MOAs (National Preservation Institute, 2015).

Select interviewees noted that upper management can also have a large impact on the consultation process through allocation of funds that are redirected from other projects or from a monetary infusion on the national level. Proper consultation and evaluation of TCPs can be costly. For instance, the Mount St. Helens (Figure 2) National Register nomination was possible in part due to special funding provided. The funding stems from a national meeting where the Keeper of the National Register emphasized to heads of federal agencies the desire to see more nominations. Furthermore, because of that meeting, the head of the Heritage Program for the Forest Service allocated money specifically to make such nominations possible. Finally, research participant Rick McClure, former Heritage Program Manager and Tribal Programs Manager for the Gifford Pinchot National Forest, was able to do the nomination because of the available funding and corresponding support of his supervisor. Because power within a political structure is not completely unilateral, research regarding the effectiveness of a policy requires analysis of the socio-political factors operating at each level (Mung'ong'o, 2009). Therefore, policy developed on the national level can be greatly altered through implementation on the local level. This may be due to the different types of serious games in play at various levels of the decisions making process. Consequently, in order for funding provided by upper management on the national level



Figure 2: Mount St. Helens.

to positively affect consultation, supervisors at all levels of the management chain must support and facilitate use of the funds.

In this section, I discussed how research participants identified specific skill sets of individual actors as the primary factor in determining effective consultation. Generally, using a political ecology lens to analyze the consultation process, I noted how there is a power imbalance within the NHPA framework because federal agencies have the ultimate authority with decisions regarding TCPs. However, I suggest that the power imbalance can be minimized through federal employees taking steps to encourage collaborative relationships with tribes through good communication skills and cultivating cultural awareness. In the next section, I will explore how federal employees can build cultural awareness and generally facilitate consultation by cultivating an understanding of the tribe's view of the landscape.

ii. Understanding the Landscape

Federal agencies may be able to better understand a TCP and the corresponding cultural values by considering how American Indians view the entire landscape where the TCP sits. Within a political structure, a dominant group's concept of nature and the resulting policies may subordinate or even exclude a less powerful group's viewpoint (Robbins, 2011). Although the NHPA may be helpful for federal agencies making decisions that may affect TCPs by offering guiding principles in the regulations (e.g. criteria for evaluating a place as eligible for the National Register), the regulations may also inadvertently subordinate tribes' traditional values and perceptions of the land. Many research participants emphasized that federal agencies understanding, and incorporating where possible, a tribe's view of the land facilitated better consultation and resolution of TCP management issues. In the following section, I argue that the NHPA and National Register requirements are generally incompatible with how many American

Indian peoples view their ancestral lands. I illustrate how this cross-cultural issue may be problematic for both tribes and agencies, particularly with establishing TCP boundaries and managing adverse effects from projects that occur outside of the TCP boundaries. Finally, I discuss a different approach to TCPs that makes looking at the landscape the starting point of discussion and analysis. I recommend a more collaborative approach that includes agencies not only understanding the tribe's view of the larger contextual landscape where the TCP sits, but that agencies should start discussions with tribes about TCPs at the broader contextual landscape instead of the isolated TCP.[20]

A prime concern many research participants voiced was the necessity of a tribe using western concepts of property in order to meet requirements under the NHPA. In particular, research participant Nathaniel Reynolds, ecologist for the Cowlitz Tribe, noted the irony of having to use a colonial framework to prove cultural affiliation to a territory that is without a doubt a part of the Cowlitz Tribe's ancestral landscape. Fish (2005) sees that the use of a western framework, most notably capitalism and associated conception of property rights, even permeates the language used to discuss these important places (such as boundary, resources, property), thus reinforcing the power imbalance during the consultation process. Many of the research participants noted that TCPs within the NHPA regulatory scheme may not fit well with how American Indians traditionally viewed the land (e.g. different views on space, time, or relations between places), and that areas or resources tribes think are important may not meet federal criteria (e.g. a place that cannot be easily bounded, a tribe's emphasis on a resource such as pine nuts or wild horse as opposed to a specific area, etc.). For example, research participant Darrel Cruz, THPO and Director of the Cultural Resource Department for the Washoe Tribe and

[20] The importance of tribes understanding the broader regulatory context is discussed below under section iii. Taking a Proactive Approach.

enrolled member, noticed a limitation in using the NHPA for places that may not meet one of the four necessary categories set forth under 36 CFR 60.4. In particular, Cruz asserted that:

> It's always been my concern that even though some of those places do not meet those criteria it's all important to us because it's our history. It tells we were there doing this but it's one of those things because it doesn't meet one of the four categories. I think it's the affiliation in a place that we still view as important. Yeah, it's one of those things and it's a common argument that I have with a lot of the land managers that just because it doesn't meet their criteria it's still important to us.

Hence, one of the greatest challenges with the NHPA, and more specifically the concept of historic properties, is its inherent incompatibility with how tribes may view the land (Curti and Moreno, 2014). It is important to note that tribes are not ignorant of a western concepts, and that many tribal members and employees grew up and continue to operate in a predominantly western framework. However, the NHPA regulations require tribes to articulate traditional values within a western framework, and these two paradigms may not always be compatible (e.g. the regulations imposing a boundary where tribes did not traditionally conceive of the place being bounded).

Although Bulletin 38 emphasizes that a TCP is a place of important cultural value to a community, and the community is accordingly the expert in deciding what is or is not a culturally relevant place, a TCP must be able to meet particular regulatory requirements in order for it be considered eligible for the National Register. Curti and Moreno (2014) emphasize that this necessarily subordinates tribes' views of the land to mere sources of data for places. The authors believe the NHPA imposes a western framework of analyzing the land onto tribal knowledge, which has the power to validate or potentially reject a tribe's claim of importance. The NHPA can therefore be a problematic framework in that it subordinates American Indians' perceptions of places that are important by requiring substantiation of claims that must meet

federal criteria, therefore reinforcing the power imbalance between federal and tribal authority (Curti and Moreno, 2014; Lusignan, 2009). Furthermore, because of the NHPA regulatory structure and its inherent dominance of a western framework, American Indians' traditional ways of viewing and articulating values regarding the landscape may mean tribes cannot meet federal criteria. Finally, although NHPA may favor an agency's authority in the management process, regulatory requirement may still restrict an agency's ability to make decisions regarding management actions. For example, the regulations require a boundary to have a cultural connection, which agencies must comply with even if a tribe agrees to a boundary based on convenience and not cultural values.

One of the larger cross-cultural issues with TCPs as historic properties is the concept of boundaries (Lusignan, 2009:42). A majority of research collaborators mentioned determining boundaries as an important part of consultation on the evaluation of the place as a historic property. The imposition of boundaries may not fit with how American Indians understand the landscape (Carmean, 2002; Lusignan, 2009; King, 2005). For example, Steinmetz explained how the requirements agencies impose on TCPs differ from how the Umatilla Tribe sees the land in that the regulations require looking at isolated places on the landscape, consequently missing how the tribe views the interconnected relationship of the place within the landscape in both time and space. Agencies understanding the entire landscape is important for situating the boundaries of a TCP. For example, Forest Service and tribes in northern California hired research participant Deur in order to supplement previous ethnographic findings regarding the Medicine Lake Traditional Cultural District. Deur explained that the Keeper of the National Register requested additional information substantiating the historic district, because the agency's interpretation of previous ethnographic work resulted in merely listing sites for the historic

district without showing the interconnectedness of the sites. In response, Deur looked at the cultural patterns of use and put it into geographical terms, thus giving better context for the historic district, substantiating the importance of these sites through their interconnection, and establishing a boundary that was reflected in the geography.

A number of research collaborators noted that tribes and federal agencies working together to situate boundaries can be at times difficult to place and can sometimes lead antagonistic discussions. Some interviewees suggested that agencies occasionally are hesitant in setting boundaries because of the management implications of recognizing a TCP as eligible for the National Register. The boundary determination for Mount Shasta (Figure 3) was a particularly contentious process (ACHP, 2014). In 1994, the Keeper of the National Register formally determined the whole of Mount Shasta as eligible for the National Register, which the tribes felt to be an appropriate determination. In response, a large portion of the public starkly opposed this determination, most notably private property owners, commercial developers, and recreationists. Berditschevsky stated that opposition was so strong that constituents mobilized a local congressman to block the determination, and the congressman subsequently requested the Keeper of the National Register to hold a hearing to determine the eligibility of Mount Shasta. In addition to considering the general public, private landowners, and commercial developers'



Figure 3: A view of Mount Shasta from the city of Mount Shasta.

concerns regarding the determination, research participant Julie Cassidy (supervisory Archaeologist and Tribal Liaison for the Mt. Shasta Ranger District) noted that the Keeper of the National Register also conducted a site visit via flyover of the mountain. Ultimately, between the hearing and site visit, the Keeper of the National Register found the entire mountain not to be eligible given the checkerboard of development due to railroad and logging activities, as well as private landholdings. The Keeper of the National Register reduced the original boundary to the 8,000 foot elevation, a 90% reduction in area of eligibility from the original determination. The incompatibility between the boundary concept and tribes' perceptions of the landscape can therefore result in conflict during the consultation process (Carmean, 2002; King, 2003; King, 2004). This may be particularly true when discussing contested landscapes where a number of actors' various games are at play. A political ecology lens useful in analyzing how a dominant group asserts their particular agenda and authority through decisions made regarding designated natural areas. In particular, a state asserts (and correspondingly buttresses) its authority over its people and territory through the classification, measurement, and regulation of natural places (Adams and Hutton, 2007; Robbins, 2011). However, the implementation of policy may be heavily influenced by non-state actors (Mung'ong'o, 2009:194). Environmentality can thus be useful in further unpacking the social and political factors affecting setting the boundary of a TCP. In particular, environmentality is less concerned about the distinction between state and society, and more interested on "the concrete strategies to shape conduct that are adopted by a wide range of social actors collaborate or are in conflict in the pursuit of particular goals" (Agrawal, 2005:223). Thus, the contention between tribes, agencies, developers, and the general public over the placement of the boundary can reflect the serious games each group is playing to advance in their agendas regarding managing this contested landscape.

Consultation regarding placement of the boundary for the Medicine Wheel/Medicine Mountain National Historic Landmark (Medicine Mountain) was similarly contentious. Through the Section 106 process, Northern Plains tribes and U.S. Forest Service entered into a MOA in 1993, and eventual Programmatic Agreement in 1994 and Historic Preservation Plan in 1996, in order to help resolve some of the major management issues, except the proper placement of boundaries (Carmean, 2002; Wyoming Sawmills Incorporated v. United States Forest Service Bill Bass, 383 F.3d 1241 (10th Cir. 2004)). Forest Service established the boundary as just the area immediately surrounding the Medicine Wheel[21] in the initial 1969 nomination of the place to the National Register (subsequently designated as a National Historic Landmark in 1970). Tribes contested that this did not accurately reflect their view of the cultural importance of the TCP; however, snowmobilers, timber companies, and mining companies (fearful of the management implications with a larger boundary) resisted the boundary expansion (Carmean, 2012). Through continued consultation, agencies and tribes worked on a new nomination to revise the size of the national landmark from 110 acres to 4,080 acres, which the Secretary of the Interior approved in 2011(NPS, 2012). The consultation processes for Mount Shasta and Medicine Mountain demonstrate how the placement of a boundary for a TCP is contentious at times not merely because of cross-cultural differences in understanding the landscape, but also because it elicits competing agendas of how to manage the land and who has the authority to set the management protocols.

Select interviewees asserted that boundaries can also be problematic for federal employees in part because establishing boundaries requires federal employees to understand the

[21] Medicine Wheel is a manmade rock feature located on the western peak of Medicine Mountain in Wyoming (Wyoming SHPO, 2013). The circular rock feature measures approximately 75 feet in diameter is a spiritually endowed place that plays a prominent role in Northern Plains tribes' ceremonies (Wyoming SHPO, 2013; King, 2003). Medicine Wheel is a type site for medicine wheels in North America (Wyoming SHPO, 2013).

cultural context of the TCP. Research participant Paul Loether, Chief of the National Register of Historic Places and National Landmarks, asserted that the NHPA requires imposition of a western framework of viewing the land, particularly through boundaries and property rights. However, he believed that federal employees need to understand the landscape where the TCP is situated in order to understand the context of why the place is important. A federal agency understanding tribes' views of the landscape can help the federal agency and tribes work together to set mutually agreeable boundaries for the TCP. For example, the Forest Service and the Cowlitz Tribe ultimately determined the boundary for the Mount St. Helens' TCP based on ethnographic information demonstrating the Cowlitz Tribe seeing the mountain as highly spiritually charged beyond the tree line. Furthermore, the Cowlitz Tribe historically sent youth above the tree line for their spirit to reveal themselves to the young adult. Correspondingly, the Forest Service and the Cowlitz Tribe decided the Loowit trail, which roughly corresponds to the tree line, as the boundary marker for the Mount St. Helens' National Register nomination. While the Cowlitz Tribe believes the mountain is most spiritually charged beyond the tree line, Reynolds noted that it does not mean that the Cowlitz Tribe or other tribes who have cultural affiliation with the area do not equally value the rest of the mountain. The Cowlitz Tribe knew that too large of a TCP would maybe not be appealing to agencies. Furthermore, McClure had

discussions with Loether regarding the nomination, and Loether reminded him that NPS policy required National Register nominations to have clear boundaries that correspond with particular cultural practices or values. Correspondingly, Forest Service and the Cowlitz Tribe believed that given the available ethnographic information and the potential challenges to the size of the historic property, the boundary of the Loowit trail (Figure 4) with its associated cultural practices seemed the most logical. Therefore, the Forest Service, the primary author of the Mount St. Helens nomination, had to understand the Cowlitz Tribe's view of the land and cultural practices in order to discuss the boundary with the Cowlitz Tribe and be able to present information in the nomination that substantiates the boundary claim.



Figure 4: Looking out from the Mount St. Helens TCP. The Loowit trail pictured above marks the TCP's boundary.

Since boundaries are set according to a community's traditional values and practices, federal employees must understand, through conversation with tribes, the cultural values and practices and how they are generally associated with the land (Lusignan, 2009:42-43).

Many research participants emphasized that even after the TCP evaluation as eligible for the National Register, continued consultation regarding activities on the landscape is necessary for mitigation and possible avoidance of other adverse effects, especially those that may occur outside the boundary. Research participant Anan Raymond, archaeologist with Fish and Wildlife

Service, believed that it is not the size of the TCP that should be hard for land managers to accept, especially if the evidence supports the claim. Instead, he suggested that the real issues come down to the managerial implications of a designation of a TCP as National Register eligible. Furthermore, Raymond thought that a good designation description will include the values associated with the place and will forecast potential future management actions, looking not only at the TCP itself, but also the surrounding landscape. A good description can help an agency to better consider and propose future management actions without wasting agency resources or potentially causing avoidable conflict in consultation. For example, one of the Duckwater Shoshone Tribe's concerns regarding the management of the Toquima Cave TCP is ensuring the visual field from the cave. Accordingly, the boundary of the TCP was important in order to help ensure protection of the viewshed. Toquima Cave happens to sit in the center of 40 acres that Forest Service removed from mining activities decades prior, and the Duckwater Shoshone thought the 40 acres would be sufficient area to protect the viewshed from the cave. The agency and tribe consequently decided to make the boundary of the TCP the 40 acres the Forest Service took out of mining activities. However, as previously discussed, other TCPs may not necessarily include the total area the tribe would consider important for the TCP. Therefore, federal agencies understanding the cultural significance of the landscape may also aid agencies in understanding whether activities outside the boundary will adversely affect a TCP by impacting the viewshed or causing atmospheric or auditory disturbances (King, 2003; Stapp and Burney, 2002). In general, when a government constructs maps, and correspondingly sets boundaries, it is employing a technology of power over its domain in order to classify and organize the area for administrative purposes (Anderson, 1991). Although federal policy only requires boundaries in formally evaluating a place eligible for the National Register, many

federal agencies still look for definite boundaries in order to contain the area for management purposes.[22] Thus, while the NHPA serves as a management tool for agencies to ensure historic properties are properly considered, merely drawing a boundary around the place is not sufficient.

One way to better consider the TCP within the landscape may be to start with a tribe's general view of the larger cultural landscape instead of the targeted project area. I believe this supports a collaborative approach to consultation that decreases the power imbalance through a co-production of knowledge in organizing the landscape. An example of a consultation process that better incorporates how a tribe may view the land is the California Energy Commission's use of a "nesting" approach. Research participant Thomas Gates, cultural resource unit analyst for the California Energy Commission, explained that the nesting approach first looks at the broadest context: the landscape. Gates believed the definition of cultural landscapes offered in NPS guidance document Protecting Cultural Landscape Brief 36 (Birnbaum, 1994) more readily fits with tribes' worldview because it allows for natural resources to be contributing factors to the cultural landscape, and therefore a less divisive policy accounting for the relationship between biological and cultural resources. In particular, Brief 36 includes discussion on four different cultural landscapes, most notably describing ethnographic landscapes as "a landscape containing a variety of natural and cultural resources that associated people define as heritage resources" (Birnbaum, 1994:2). Evans et al. (2001:54-55) sees a benefit in using an ethnographic landscape not only because it allows for the overlap of cultural and natural resources, but also because it more easily accommodates multiple communities who may value a place for differing qualities or reasons, hence allowing for overlapping views of the landscape. The California Energy Commission breaks down the broader contextual cultural landscape into

[22] For more discussion on the non-requirement of boundaries, and the unnecessary emphasis on setting boundaries see King, 2003:169-74.

smaller and smaller landscapes until the energy commission identifies the historic property that will be affected by the project. Gates found that the nesting approach allows the energy commission to have a "conversation about context, to talk about the biggest picture, but ratchet it down to a meaningful level of management and impact mitigation assessment area." Instead of starting from an isolated place and working outward, the energy commission begins with how the tribes may see the land as the starting point. Fish (2005:48) suggests that moving away from a western framework with TCPs that necessitates use of western-capitalistic language and concepts, tribes and agencies can use culturally-specific language and concepts that still meets federal criteria but better reflects tribes' views of the land. He further asserts that this approach helps lessen the power imbalance between federal agencies and tribes, leading to more nuanced understanding and discussion of the place, and ultimately provide opportunity for management and protection of the TCP. Research participants commonly stated that federal employees with awareness of American Indian cultures and protocols, particularly understanding perspectives on landscapes, were important for effective consultation regarding these places. Accordingly, the nesting approach helps orient the conversation between agencies and tribes to more culturally appropriate perceptions and thus language regarding the TCP.

In this section, I discussed the importance of incorporating a tribe's view of the landscape into the consultation process. I argue that better consultation between tribes and federal agencies not only requires federal agencies to understand the larger contextual landscape, but that the analysis should start with the how tribes view the broader landscape. I noted how the NHPA requires a western framework of looking at the land that may be incompatible with American Indians understanding of the landscape. This western framework subordinates a tribe's knowledge of the land and can be used to deny a TCP the beneficial provisions of the NHPA. In

general, understanding the landscape requires agencies going beyond basic legal requirements of consultation. In the following section, I analyze other ways tribes and agencies can build stronger relationships and meet more management goals by going beyond the prescribed consultation measures and taking a proactive approach.

iii. Taking a Proactive Approach

Federal agencies taking a proactive approach with TCPs and consultation in general can greatly improve tribe and agency relationships, as well as lead to more mutually agreeable management decisions. I argue that a proactive approach not only minimizes conflict, allowing for activities and projects to occur more expeditiously and potentially with less cost, but can also provide opportunities for stronger relationships and accomplishing more mutually agreeable management goals (Parker and King, 1998; King, 2003). In the previous two sections, I already discussed some important proactive practices for agency employees, including consulting early and often, establishing confidentiality protocols, cultivating an emic or insider perspective of how the tribes view the land, and conducting site visits. I suggested how these practices can lessen the power imbalance between tribes and federal agencies through the co-production of knowledge and building better relationships. In this section, I will look at a few areas, where several research participants noted activities beyond complying with Section 106 that led to positive outcomes. These outcomes can include: federal employees building cultural knowledge and appreciation outside of compliance-drive discussion, tribes using the regulations to further their own projects, tribes and federal agencies nominating a TCP to the National Register as a mutually desired project, and tribes and agencies using the NHPA to reach mutually agreeable

co-management goals. I assert that both federal agencies and tribes benefit when federal agencies are proactive with consultation in adopting a collaborative approach.[23]

A majority of research collaborators believed one of the important ways agencies can build positive relationships with tribes and facilitate better consultation is interacting outside of the Section 106 process. Consultation regarding TCPs is often within the Section 106 context, which can at times pit agency against tribe. In light of this, research participants believed that building relationships outside the Section 106 process can lead to a more mutual understanding between agencies and tribes and thus better consultation. In particular, interviewee Reed believed that having essential cultural knowledge of the tribes that an agency engages with is important for proper consultation. More specifically, Reed saw understanding cultural core values as important because it helps agencies identify potentially important management issues and not just the political issues directly at hand. Accordingly, he believed that through basic ethnographic work, an agency can better understand the core values of a tribe and what needs to be addressed through consultation. King (2003) also agrees that an agency cultivating an understanding of a tribe's culture and view of the landscape outside of an impending project can be beneficial in building better relationships and facilitating more productive consultation. For instance, in 2012 the Bureau of Ocean Energy Management, Office of National Marine Sanctuaries, Confederated Tribes of Grand Ronde, Makah Tribe, and Yurok Tribe developed and implemented a proactive approach for collaboratively synthesizing landscape knowledge regarding the Pacific Ocean. Grussing et al. (2014:7) found that the tribes and agencies in their study believed this model to be most effective in the planning stages of offshore energy projects.

[23] This of course assumes that tribes want to be collaborating partners. Several of the interviewees implied, as well as directly stated, that tribes might have different levels in which they might want to participate in the management of a place. Some tribes may just want to make sure the place is unharmed from development, some may want access, others may want full participation in its management, and some may want all three objectives.

In particular, the authors found that this program facilitates tribes' ability to assert their worldview and identity in the planning and management process, communication between tribes, agencies' ability to plan for offshore energy development more efficiently and with less conflict by considering more culturally-sensitive areas , and agencies and project developers filling in important knowledge gaps for ocean management.

A majority of collaborators believed that agencies that take the time to consult with tribes about their view of the landscape and the areas they are particularly interested in protecting can help avoid potential conflict with future projects. For instance, in the 1980's Mount Baker-Snoqualmie National Forest employees conducted an inventory survey to account for all places of interest the tribes identified, and as an ancillary project subsequently designed a map that identified the important places. The Forest Plan included this information, and tribes were then consulted whenever there was an impending project for an identified area. Although the Forest Plan could not allocate land specifically for American Indian purposes, the Forest Service looked for land designations the Forest Service was required to include in their management, such as wilderness designations, that aligned with cultural places tribes identified, subsequently offering a level of protection to those places. The National Forest Management Act of 1976 established the requirement that all National Forests establish a Land Management Plan (or Forest Plan) that inventories the natural resources and plans for potential uses of the land (e.g. logging, building roads, American Indian use, etc.). However, Forest Service was not required to establish a historic preservation program that identifies and manages historic properties until revisions to Section 110 of the NHPA in 1992 (16 U.S.C. 1600; Kanefield and Bell, 1996). Forest Service therefore went beyond the minimal legislative requirements in forming the Forest Plan for Mount Baker-Snoqualmie National Forest by taking account of important cultural places and forecasting

how these places may be best protected from potential future projects. Hollenbeck stated that the Forest Service now takes an even more inclusive approach and contacts all tribes that may have an interest in the area, even if tribes did not previously identify the area in the Forest Plan. In particular, Hollenbeck recognized that tribes are in the best place to provide their perspective on a project. Hollenbeck believed that while some relationships between Forest Service and tribes remain strained, generally because of the agency's inclusive approach and being attuned to the cultural variation between tribes, that the agency mostly has very strong relationships with the tribes. King (2003) similarly asserts that an inventory or explicit designation of historic properties may not be necessary if a tribe's concerns can be addressed through consultation protocols for potential actions affecting culturally important resources. He further underscores that agencies should not assume a tribe's perspective on the potential impacts of a project on a TCP, but should support and seek out a tribe's perspective. Correspondingly, I urge that federal agencies and tribes co-producing knowledge about the land can lessen this power imbalance and lead to more robust and accurate understandings of the place (Phillips et al., 2013; Smith, 1999; Spoon, 2014; Spoon, 2013). Mount Baker-Snoqualmie National Forest employees consequently not only built better relationships through an inclusive approach, but also co-produced knowledge with the tribes about the landscape outside of the Section 106 context, consequently facilitating better consultation on future projects.

Select collaborators noted different ways tribes can take a proactive approach in gaining footholds in management decisions of important places no longer under their governance, as well as building their historic preservation programs.[24] In general, archaeological and cultural

[24] Other tribes are able to meet their cultural resource requirements without a THPO (Stapp and Burney, 2002). However, I was unable to contact tribes that have a cultural resource program that has an alternate program than a Tribal Historic Preservation Office. Thus, my scope of analysis is limited to a proactive approach within the NHPA framework.

resource management methodologies and paradigms may be inherently inconsistent with a tribe's worldview and belief system (Kennedy, 2010; LeBeau and La Bounty, 2010). I believe that tribes assuming the evaluation of TCPs as historic properties can be beneficial to the tribe, offering better representation of the place and management issues in the consultation process and providing potential employment for the tribe. The Confederated Tribes of the Colville Reservation's (Colville Confederated Tribes) historic preservation program offers one model using a proactive approach. In particular, research participant Guy Moura, THPO for the Colville Confederated Tribes, described the Colville Confederated Tribes' historic preservation program as compliance-centered. Moura explained that initial efforts to ensure agencies meet their legal mandates began with tribal member Adeline Fredin. Fredin worked with her husband year-after-year to rebury the remains that were exposed each year due to erosion caused by the Grand Coulee Dam. Fredin, frustrated that agencies, whose actions caused the exposure of remains, were not being held accountable for their actions, looked for ways to get agencies to be accountable for its actions through the enforcement of laws. The Colville Confederated Tribes established their History/Archaeology Department in 1978, around the same time the Chief Joseph Dam Cultural Resources Project started, for which Colville Confederated Tribes members were trained to do archaeological fieldwork and laboratory analysis (Stapp and Burney, 2002). In 1996, the Colville Confederated Tribes was one of the first tribes to establish their THPO and receive their historic preservation funding per Section 110 of the NHPA. Therefore, the 1992 amendments to the NHPA improved tribes' ability to reclaim authority over their own history by providing funding for tribe's historic preservation programs and allowing tribes to designate a THPO (Stapp and Burney, 2002). The amendments to the NHPA thus slightly shifted the power balance so that tribes had more ability to pursue the projects or agendas in their serious games.

Research participants, especially those working for tribes, noted tribes' limited financial resources as one of the larger issues for tribal historic preservation programs.[25] One proactive approach to supplement programmatic money from NPS may be for tribes to seek out funding for conducting resource studies and carrying mitigation measures. Moura explained that the Colville Confederated Tribe's compliance-centered approach makes them fundable by agencies to carry out projects that benefit the tribe and educates agencies about the tribe, such as a DVD productions on tribal history and culture, for example documenting the change in the tribe's fishing at the Chief Joseph Dam, and build its historic preservation program. The Colville Confederated Tribes recognized that these projects affecting traditional lands would proceed even without the tribe's participation, and furthermore that they were missing out on an opportunity to co-manage cultural resources and secure funding that could be invested on the tribe. Moura explained that the tribe has grown their funding for the historic preservation program through project funding for the full suite of historic property studies mandated through the Section 106 process. In particular, Colville Confederated Tribes expanded its operating budget to millions of dollars per year in project funding, which has allowed the tribe to grow its historic preservation program to include forty fulltime and seasonal employees, a laboratory for data analysis, and a repository to house over one hundred thousand artifacts recovered from various development projects. Tribal historic programs can therefore benefit their communities through the development of a historic program that generates funds for the tribe and employs tribal members (Stapp and Burney, 2002).

Based on my research, I assert that an applied anthropology approach that incorporates collaborative ethnography can be beneficial since it can reduce costs related to historic property

[25] In 2011, NPS's funding provided for Tribal Historic Preservation Offices totaled $7,445,463, with 117 tribal programs receiving an average of $63,636 in funding (NATHPO, n.d.).

designation and management of TCPs, potentially lead to more funding opportunities, and lessen the power imbalances between agencies/researchers and tribes. Most research participants noted that generally tribes will not seek an evaluation of a place as a TCP eligible for the National Register unless there is an impending project that may adversely affect the place. TCP evaluations for the eligibility of a place for the National Register must therefore have a practical application.

Applied anthropology breaks from traditional anthropological research by moving away from ethnographic work centered on academic or theoretically driven research, and instead focuses on the application of anthropological skills to real world issues and needs (Ervin, 2005). I believe that an applied anthropological approach with collaborative ethnography helps tribes and agencies to focus and address the relevant issues surrounding the evaluation of a TCP, such as concerns relevant to the community and the legislative requirements. For example, Deur recognized the limited project time and funding for TCPs, and consequently folds questions directly answering legislative and policy requirements into the ethnographic questions. This is similar to the approach the Colville Confederated Tribes use in its TCP work, which the tribe frames using the type of study design used for many Section 106 projects. Moura explains that the tribe's current approach makes projects appealing to agencies for funding because it is in terms agencies understand. For over a century, anthropologists studied the Colville Confederated Tribes, often presenting a timeless and essentialized version of the tribe that primarily served to further the anthropologists' research interests (Colville Confederated Tribes, 2011:7-14). However, the tribe currently conducts the ethnographic work, thus focusing on issues relevant to the tribe. Furthermore, the Colville Confederated Tribes' council then directs

its historic preservation program on how to use the ethnographic information and funds generated to best serve the tribe.

As applied anthropology becomes more relevant within its discipline, so have collaborative approaches to research that incorporates the targeted community as partners during every step of the research (e.g., identifying issues, designing the research, collecting information, analyzing results, etc.) (Van Willigen, 2002; Low and Merry, 2010; Rylko-Bauer et al., 2006). While applied anthropology does not require a collaborative approach, incorporating collaborative methods can help better address issues central to the research. In particular, collaborative ethnography offers targeted communities and researchers opportunities for greater local participation and co-ownership of the research, co-production of knowledge, and overcoming barriers to sharing knowledge in the research process (Spoon, 2014:39). Accordingly, an applied anthropology approach can help to lessen the power imbalance between the researcher and the community as the relationship becomes less extractive and more of an equitable exchange that focuses on issues relevant to the community (Kedia, 2008:17-18).

Agencies and tribes working together to nominate a TCP to the National Register is another proactive way agencies and tribes can build relationships, cultivate cultural understanding, and generate additional benefits associated with a historic property listed in the National Register. In general, a number of research participants recognized that listing a TCP in the National Register or even evaluating a place as eligible is not something by itself that a tribe would desire in order to validate the cultural importance of a place, and that the benefits must therefore outweigh any drawbacks of pursuing a determination of eligibility or listing in the National Register. Research participants McClure and Reynolds, recognized that in certain situations there may be a number of limitations and drawbacks in pursuing a National Register

nomination, such as the NHPA and nomination requirements being incompatible with the tribe's view of the land and the cost associated with the nomination process. Despite this, they believed that there are a number of positive benefits in pursuing the Mount St. Helens nomination. One major benefit of the nomination is that it raises public awareness that the Cowlitz Tribe is still a viable community with deep ties to the landscape. In particular, McClure and Reynolds thought the Forest Service and the Cowlitz Tribe could use the nomination to educate the public about the Cowlitz Tribe's history with the landscape through outreach lectures or on-site tours that promote the nomination, publications, or news releases. Spoon and Arnold (2012) note that a collaborative method allows for incorporation of a tribe's relationship with the land into exhibits, visitor centers, and other interpretive places. The authors further assert that this therefore improves the public's understanding of the human-environment relationship that shaped the land.

Tribes and agencies can also use collaborative ethnography to help identify ways to incorporate American Indian practices into land management decisions addressing environmental issues, such as large scale forest fires (Spoon et al., 2015). McClure and Reynolds believed the nomination process, particularly done in the spirit of collaboration, is also a good way to build a healthy relationship between the tribe and federal agency. Additionally, they found the nomination facilitated public outreach that helped to showcase the good working relationship between the Cowlitz Tribe and Forest Service, generally demonstrating that a cooperative and good working relationship is possible. Many research participants believed that agencies and the general public may subconsciously afford more protection to places listed in the National Register than those just deemed eligible, even though they should be treated the same. Furthermore, having a TCP listed in the National Register may give it more political weight in countering development or other adverse actions. Finally, although specific funding for TCPs

was not identified in this research, many research participants felt that a TCP's listing in the National Register would be beneficial in applying for grants or funds, in that funders will psychologically afford the place more value.

Tribes and agencies can use the NHPA to initiate conversations regarding other issues for a TCP beyond mitigation of adverse effects. In particular, Deur saw the NHPA process as a means for tribes to establish discussion regarding other policy and legislation relevant to American Indian ancestral lands, such as National Environmental Policy Act, American Indian Religious Freedom Act, and Executive Orders 13007 and 12898, which starts to build a proper course of action for management. Many research participants noted various reasons why tribes should be an important part of land management decisions for TCPs, most notably including tribes' knowledge of the place and the corresponding proper management and empowerment of the tribe. Yablon (2004:1639-1645) believes that the combination of legal authorities relevant to American Indian landscapes, which most notably require proper consultation with tribes, effectively increased agencies involvement of tribes in land management decisions and general protection of these places.

Agencies and tribes might benefit most through co-management of TCPs. Co-management of a TCP is not statutorily required, but can offer a proactive approach that better considers and resolves issues specific to a TCP, as well as lessen the inherent power imbalance between tribes and agencies. Berkes (2009:1693) explains that co-management is an agreement generally between a government and local stakeholders that formalizes sharing power over resource management, thus going beyond the consultation process. Co-management can also be beneficial to agencies by helping agencies meet their management goals (Nie, 2008). For example, Reynolds explained that the Mount St. Helens National Register nomination facilitated

a cooperative survey conducted in August 2014 of mountain goats. The Cowlitz Tribe, along with biologists for Forest Service and Washington Department of Fish and Wildlife, conducted a survey of mountain goats in order to assess the size of the population. Prior to the survey, only anecdotal evidence existed regarding mountain goats presence on the landscape post-1980 eruption. Furthermore, Reynolds saw this as a foundational step for reintroducing traditional practices of collecting tufts of mountain goat hair for weaving. Both Reynolds and McClure believed the designation of Mount St. Helens opens the door to even more future co-management opportunities. Thus, both the tribe and the federal agency was able to advance their projects in their serious games through collaboration. This demonstrates how actors do not just in engage in serious games that are oppositional, but also enact non-oppositional games where the actors play with or for another (Ortner, 1999:150).

Berkes (2009:1698) further emphasizes that long-term effective co-management must be adaptive, necessarily changing as lessons are learned and new knowledge is incorporated. While co-management plans are generally formalized, research participants noted that agreements should be as detailed or generalized as is appropriate given the context, and can range from a basic agreement on how future management decisions will be made to detailed management plans. Collaborators generally noted that many of the TCPs they worked on do not have management plans yet, and that management plans may not be necessary or appropriate in certain contexts. Some contextual factors identified for types of agreements include the tribes and agencies' capacities to fulfill certain obligations given limited staff and resources, a tribe's willingness to share culturally sensitive or confidential information, and the specific personalities involved. Management decisions and the manner in which they are made are accordingly

handled best at the local rather than the national level, in part because on the local level specific factors and issues for a place are often better understood and thus accounted for (Yablon, 2004).

One example of an agreement that took the form of a detailed formal management plan is the management plan for the Medicine Lake Highlands. The Medicine Lake Highlands Historic Properties Management Program: Including a Cultural Assessment and Guidelines for Management was one result of the negotiated Memorandum of Agreement (MOA) signed in 2000 between the Department of Interior, BLM, Forest Service, California SHPO, ACHP, and Pit River Tribe regarding the proposed geothermal projects. Agencies and the tribes worked together to ultimately complete the management plan in 2007. However, it is a living document that continues to change as new information and different situations arise. Research participant Gerry Gates, Heritage Resource Program Manager for Modoc National Forest, noted that as part of the settlement, the historic management plan was to be implemented regardless of whether the geothermal developments went forward, in part:

> [B]ecause the agencies recognized the special importance of the highlands, with more than 20 specific locations that contemporary tribes said were still important to them. That we should be managing the area so as to not affect those tribal values, and that's why that program was put together.

The Medicine Lake management plan takes a long-term broad view of potential issues by including not only concerns regarding geothermal development, but also touching on issues with noise and oil pollution from motorboats, access for traditional practices and camping, and general issues regarding protecting resources (e.g. obsidian, water, plants). Long-term management plans should account for all actions that are currently or may potentially affect a TCP and necessarily tailor to the specific issues connected to the TCP (King, 2003). Furthermore, the status of the management plan as a living document that changes as additional

knowledge, issues, and needs arise, fits with Berkes' (2009) insistence that long-term co-management can only be sustainable through adaptive co-learning. Adaptive co-learning occurs when various stakeholders integrate different ecological understandings and practices to obtain certain ecological goals, and that this co-produced knowledge changes over time due to information gained through short-term crises and long-term observation (Spoon, 2011; Turner and Berkes, 2006).

Research participant Gali saw co-management with tribes and federal agencies as important for maintaining the health of Mount Shasta and Medicine Lake Highlands (Figure 5).



Figure 5: Medicine Lake located in the caldera of Medicine Lake Highlands.

Reflecting on Pit River's understanding of the tribe's presence on the land, Gali saw the tribal communities' presence on the land important because:

> You're helping to take care of this mountain, because this mountain and these lakes and everything that we're provided with, they're taking care of you. I know that there's stories that we've been told by the elders. If you don't go out and collect the acorns, if you don't go out and utilize the lake,

> and that creator put us here for it to be used, it's gonna go away. That's our responsibility to not only use it in the way that it's supposed to be used, but also to help take care of it and protect it.

Gali further noted that because of this connection, tribes truly know the land.[26] Berkes (2009:1694-1695) explains that co-management moves beyond top-down management by allowing for the co-production of knowledge, and hence better solutions, through the inclusion of different groups at varying scales, particularly including local communities with their knowledge of context specific knowledge, in the decision making process. He adds that due to the complexity of resource management, adaptive co-learning should include all groups within the process since no one community, agency, or other stakeholder has the complete set of knowledge for management. Therefore, federal agencies and tribes co-managing TCPs must include an adaptive co-learning process to ensure inclusion of the complete suite of information regarding the place.[27]

The third and final theme I explored in this section is the importance of a proactive approach for TCPs beyond the compliance-driven context. In general, I noted that a proactive approach includes federal agencies building relationships with tribes outside the Section 106 process, tribes building their historic programs, and tribes and federal agencies pursuing mutually beneficial goals. As for management of TCPs, I discussed the necessity of using an adaptive co-learning process. This process generally lessens the power asymmetry inherent between tribes and federal agencies regarding land management decisions, and also leads to better solutions due to the increased depth of knowledge about the resources. I correspondingly

[26] It is important to note that I do not intend to essentialize tribes or their ecological knowledge. Due to cultural practices and historical circumstances (e.g. colonialism) ecological knowledge may be heterogeneous, and thus concentrated with particular individuals or subgroups within a group (Spoon, 2014; Van Eijck and Roth, 2007).

[27] Further research should analyze how to include stakeholders (e.g. developers, recreationists etc.) in the deliberation process.

urge a partnership between agencies and tribes that includes more collaborative methods encouraging American Indian nations as partners with agencies in making important land management decisions.

VI. Conclusion

Individuals and groups' differing agendas regarding proper land management can turn federally governed lands into highly contested places. Consultation through meaningful and respectful discussion is a necessary part of resolving disagreements. Throughout this paper, I argue that while the NHPA offers the most comprehensive framework for consultation compared to other legal statutes and policy, it also reflects, and at times can reinforce, the power imbalance between tribes and federal government. I took a political ecology approach to assess the power imbalance between tribes and agencies and identify the factors that augmented effective consultation and led to mutually agreeable resolution of issues. While my focus was on the relationship between tribes and agencies, I also discussed a bit about how other various actors, such as developers or recreationists, are also engaged in serious games regarding use and management of these places. The research consisted of a core component that compared five TCPs in the Southwest and Pacific Northwest using semi-structured interviews of eleven key consultants and a review of legal documents, grey literature, and other publications pertaining to the TCPs. The research also entailed a supplementary component of semi-structured interviews of fourteen individuals with TCP experiences not directly associated with the five case studies. From the research, I identified three main themes that influence the consultation process and overall relationship between agencies and tribes, including the importance of the skill sets of individual actors in the consultation process, agencies understanding how tribes view the

landscape, and tribes and agencies taking a proactive approach in the consultation process. These factors are interrelated and thus reinforce each other.

I argue that these factors support a collaborative approach to managing TCPs that lessens the power asymmetry between tribes and the federal government. In general, although tribes and the federal government have a government-to-government relationship, the federal government generally supersedes tribal sovereignty, consequently subordinating tribes' authority (Ford, 2010). The NHPA further reinforces this because the federal government has the ultimate decision making power on management decisions for TCPs. However, my research showed how the individuals involved in consultation (especially federal employees) can greatly affect the process, relationship between agency and tribe, and ultimate TCP management decisions. Individuals with the proper skill sets to support more meaningful consultation include those with effective communication skills and good cultural awareness. Research participants commonly noted that a federal agencies ability to cultivate an understanding of how tribes view the land and build better relationships with tribes often have better land management outcomes, such as less conflict, less time wasted, and reduced costs due to more efficient and amicable consultation.

My research furthermore showed how a proactive approach outside of compliance-centered consultation can improve relationships between tribes and agencies, as well as create opportunities for obtaining mutually agreeable management goals. I also lightly touched on how tribes can take a proactive approach in building their historic preservation programs in order to reclaim more authority over the management of ancestral lands and the accompanying knowledge. Historically, Euro-Americans used conservation discourse to remove indigenous inhabitants from their traditional lands and subordinate their knowledge on proper care of the land. I argue that a collaborative research facilitates a co-production of knowledge that lessens

this power imbalance and leads to a better understanding of the environment (Phillips et al., 2013; Smith, 1999; Spoon, 2014). Federal agencies can hence facilitate more effective consultation by looking to tribes as partners in understanding and managing the landscape and not just obligatory parties that they must consult with.

Federal agencies and tribes that co-manage TCPs may not only lessen conflict between an agency and tribe, but can also lead to mutually agreeable management goals. Although a completely equal partnership between federal agencies and tribes may not be possible due to the inherent power imbalance between the federal government and tribes, federal agencies can take additional steps to encourage a more equitable relationship. For example, within applied anthropology, researchers recognize the importance of a collaborative approach not only in the identification of research goals, but also in design and implementation of the research (Kedia, 2008; Spoon, 2014). Furthermore, federal agencies should recognize that within the field of anthropology there is a historically hierarchical relationship between anthropologists and the communities they engage with (Smith, 1999; Low and Merry, 2010). There is consequently a power imbalance not only within the statutorily required western framework, but also in the methods employed by cultural anthropologists. Smith's (1999) call for a decolonization of social science methods may not be possible for anthropological work within the federal context, due to the need to meet particular federal requirements. However, agencies should discuss with tribes which methods to use that would be culturally appropriate and also relevant to the issue at hand. Additionally, agencies could discuss what ways the methods could be altered to align more with what would be culturally appropriate for the tribe while still meeting legal mandates. As tribes seek to reassert their presence on ancestral territory, a more collaborative process that engages the tribe as equals will give a more critical and nuanced understanding of the TCP issues.

Ultimately, collaboration facilitates more opportunities for tribes to reconnect with the land, as well as empowering tribes by strengthening self-determination through increased recognition of sovereignty.

References Cited

[ACHP] Advisory Council on Historic Preservation. (2012). Consultation with Indian Tribes in the Section 106 Review Process: A Handbook. Available at: http://www.achp.gov/pdfs/consultation-with-indian-tribes-handbook-june-2012.pdf.[ACHP] Advisory Council of Historic Preservation. 2013. Section 106 Regulations Summary. Available at: http://www.achp.gov/106summary.html.

[ACHP] Advisory Council on Historic Preservation. (2014). Section 106 Success Story, Protecting Traditional Places on Public Lands: Mount Shasta. Available at: http://www.achp.gov/docs/Section106SuccessStory_MtShasta.pdf.

[ACHP] Advisory Council on Historic Preservation. (2015). Section 106 Success Story, TCC: A Better Model in Tribal Involvement in Transportation Projects. Available at: http://www.achp.gov/docs/Section106SuccessStory_TCC.pdf.

Agrawal, A. (2005). *Environmentality: Technologies of government and the making of subjects* (New ecologies for the twenty-first century). Durham: Duke University Press.

Albert, M. K. (2009). Obligations and Opportunities to Protect Native American Sacred Sites Located on Public Lands. *Columbia Human Rights Law Review*, 40(2):479-522.

Alexander, S.R. (2012). Tribal Consultation for Large-Scale Projects: The National Historic Preservation Act and Regulatory Review. *Pace Law Review,* 32(3):895-921.

Anderson, B. (1991). Census, Map, Museum. In *Imagined communities: Reflections on the origin and spread of nationalism*. London: Verso.

Andersson, E., Brogaard, S., and Olsson, L. (2011). The Political Ecology of Land Degradation. *Annual Review of Environment & Resources,* 36(1): 295.

Baker, M. (2011). What Does it Mean to Comply with NEPA? An Investigation into whether NEPA Should Have Procedural or Substantive Force. (National Environmental Policy Act of 1969). *Utah Environmental Law Review*, 31(1):241-262.

Beaulieu, E. (2010). Theorizing Feminist and Social Movement Practice in Space. In *Solidarities beyond borders: Transnationalizing women's movements*. Eds. Dufour, P., Masson, D., and Caouette, D. Vancouver: UBC Press.

Berkes, F. (2009). Evolution of Co-management: Role of Knowledge Generation, Bridging Organizations and Social Learning. *Journal of Environmental Management*, 90(5):1692-1702.

Bernard, H. R. (2011). *Research methods in anthropology: Qualitative and quantitative approaches, third edition.* New York: Altamira Press.

Biersack, A. (2006). Reimagining Political Ecology: Culture/Power/History/Nature. In *Reimagining Political Ecology.* Eds. Biersack, A., Greenberg, J.B, and Escobar, A. Pp. 3-42. Durham: Duke University Press.

Birnbaum, C.A. National Park Service. (1994). Protecting Cultural Landscapes: Planning, Treatment and Management of Historic Landscapes. Available at: http://www.nps.gov/tps/how-to-preserve/preservedocs/preservation-briefs/36Preserve-Brief-Landscapes.pdf.

Bluemel, E.B. (2005). Accommodating Native American cultural activities on federal public lands. *Idaho Law Review*, 41(3):475-563.

Borgerhoff-Mulder, M. and Coppolillo, P. (2005). Local People and International Conservation. In *Conservation: linking ecology, economics, and culture*. Princeton University Press, Princeton and Oxford.

Brockington, D. and Duffy, R. (2011).*Capitalism and conservation* (Antipode book series). Hoboken: Wiley.

Brockington, D., Duffy, R., and Igoe, J. (2008). *Nature unbound: Conservation, capitalism and the future of protected areas*. London; Sterling, VA: Earthscan

Carmean, K. (2002). *Spider Woman walks this land: Traditional cultural properties and the Navajo Nation*. Walnut Creek, CA: Altamira Press.

Carpenter, K.A. (2006). Old ground and new directions at sacred sites on the western landscape. *Denver University Law Review*, 83(4):981-1002.

[CEQ] Council on Environmental Quality. (2007). A Citizen's Guide to the NEPA: Having Your Voice Heard. Available at: https://ceq.doe.gov/nepa/Citizens_Guide_Dec07.pdf.

Charnley, S., Fischer, A. P., Jones, E. T., and the Pacific Northwest Research Station. (2008). Traditional and local ecological knowledge about forest biodiversity in the Pacific Northwest (General technical report PNW-GTR-751). Portland, OR: U.S. Dept. of Agriculture, Forest Service, Pacific Northwest Research Station. Available at: http://www.arlis.org/docs/vol1/A/233598591.pdf.

Clawson, M. (1983). *The federal lands revisited*. Washington, D.C.: Baltimore: Resources for the Future; Distributed by the Johns Hopkins University Press.

[Colville Confederated Tribes] Confederated Tribes of the Colville Reservation History/Archaeology Program. (2011). Native American Place Names Along the Columbia River Above Grand Coulee Dam, North Central Washington And Traditional Cultural Property Overview Report. Available at: http://www.colvilletribes.com/place_name_document.php.

Curti G.H. and Moreno, C.M. (2014). Introducing Traditional Cultural Properties (In Need of Critical Geographies). *Human Geography*, 7(2):1-10.

Department of Commerce. (2013). Tribal Consultation and Coordination Policy for the U.S. Department of Commerce. Available at: http://2010-2014.commerce.gov/sites/default/files/documents/2013/august/doc_final_policy_1.pdf.

Department of Labor. (2012). Tribal Consultation Policy. http://www.dol.gov/ope/tribal-consultation-policy.htm.

Di Giminiani, P. (2013). The Contested Rewe: Sacred Sites, Misunderstandings, and Ontological Pluralism in Mapuche Land Negotiations. *Journal Of The Royal Anthropological Institute*, 19(3):527-544.

Dustin, D., Schneider, I., McAvoy, L., and Frakt, A. (2002). Cross-Cultural Claims on Devils Tower National Monument: A Case Study. *Leisure Sciences*, 24 (1), 79-88.

[EPA] Environmental Protection Agency. (2014). Responses to Tribal Comments on Proposed EPA Consultation Policy. Available at: http://www.epa.gov/tp/pdf/final-responses-to-comments-on-proposed-epa-tribal-consultation-policy-17APR14.pdf.

Ervin, A. (2005). *Applied anthropology: Tools and perspectives for contemporary practice*. Boston: Pearson/Allyn and Bacon.

Evans, M.J., Roberts, A., and Nelson, P. (2001). Ethnographic Landscapes. *CRM*, 24(5):53-56.

Fish, A. (2005). Native American Sacred Places and the Language of Capitalism. *Future Anterior: Journal of Historic Preservation, History, Theory, and Criticism*, (2)1:40-49.

Fiske, S.J. (2008). Working for the Federal Government: Anthropology Careers. *NAPA Bulletin*, 29:110-130.

Ford, A. R. (2010). The Myth of Tribal Sovereignty: An Analysis of Native American Tribal Status in the United States. *International Community Law Review*, 12(4):397-411.

Force, J. E. and Forester, D.J. (2002). Public Involvement in National Park Service Land Management Issues. *Social Science Research Review*, 3(1):1-28.

Foucault, M., (2007 [1978]). Lecture: 1 February 1978. In *Security, territory, population: Lectures at the Collège de France, 1977-78*. Eds. Senellart, M., Ewald, F., Fontana, and Davidson, A. Pp 87-114. New York: Palgrave Macmillan.

Frost, W., and Hall, C.M. (2009). *Tourism and National Parks: International Perspectives on Development, Histories, and Change* (Contemporary geographies of leisure, tourism, and mobility). New York, NY: Routledge.

Getches, D. H., Wilkinson, C. F., and Williams, R. A. (2005). *Cases and materials on federal Indian law*. St. Paul, MN: Thomson/West.

Glicksman, R. (2014). Wilderness Management by the Multiple Use Agencies: What Makes the Forest Service and Bureau of Land Management Different? *Environmental Law, 44*(2):447-496.

Goodall, H. (2006). Indigenous peoples colonialism and memories of environmental injustice. In *Echoes from the poisoned well: Global memories of environmental injustice*. Eds. Washington, S., Goodall, H., & Rosier, P.C. Lanham, MD: Lexington Books.

Grussing, V., Ball, D., Thorsgard, E. and Edwards, B. (2014). Characterizing Tribal Cultural Landscapes for Resource Preservation and Protection: Documenting Culturally Important areas- for tribes, by tribes. In *Proceedings of the 2nd Asia-Pacific Regional Conference on Underwater Cultural Heritage*. p. 61-72. Available at: http://www.themua.org/collections/items/show/1581.

[HAC] Housing Assistance Council. (2013). Taking Stock: Native American Lands. Pp. 93-103. http://www.ruralhome.org/storage/documents/ts2010/ts-report/ts10_native_lands.pdf.

Hayes, T. and Ostrom, E. (2005). Conserving the world's forests: Are protected areas the only way? *Indiana Law Review, 38*(3):595-617.

Hoover, K. Congressional Research Service. (2014). Federal Lands and Natural Resources: Overview and Selected Issues for the 113th Congress. Available at: https://www.fas.org/sgp/crs/misc/R43429.pdf.

Horgan, D.E. (2011). Reconciling the past with the future: The Cape Wind project and the National Historic Preservation Act. *Vermont Law Review,* 35(2): 409-432.

Hutt, T. (2009). The Evolution of Federal Agency Authority to Manage Native American Cultural Sites. *George Wright Forum,* 26(1):45-56.

Jensen, J. (2012). First Americans and the Federal Government: Tribal Consultation, Agriculture, and a New Government-to-Government Relationship at the Start of the Twenty-First Century. *Drake Journal Of Agricultural Law,* 17(2):473-509.

Kalamandeen, M. and Gillson, L. (2007). Demything "wilderness": Implications for protected area designation and management. *Biodiversity and Conservation,* 16(1):165-182.

Kanefield, A. and Bell, C.R. Advisory Council on Historic Preservation. (1996). Federal Historic Preservation Case Law, 1966-1996: Thirty Years of the National Historic Preservation Act. Available at: http://www.achp.gov/book/TOC2.html.

Kedia, S. (2008). Recent Changes and Trends in the Practice of Applied Anthropology. *NAPA Bulletin* 29:14-28.

Kennedy, S. (2010). Indigenous Archaeology: Historical Interpretation from an Emic Perspective *Nebraska Anthropologist,* 25:5-20.

King, T.F. (2000). What Should Be the "Cultural Resources" Element of an EIA? *Environmental Impact Assessment Review,* 20:5-30.

King, T.F. (2003). *Places that count: Traditional cultural properties in cultural resource management*. Walnut Creek, CA: Altamira Press.

King, T.F. (2004). *Cultural resource laws and practice: An introductory guide*. Walnut Creek, CA: Altamira Press.

King, T.F. (2005). What Are Traditional Cultural Properties? *The Applied Anthropologist,* 25(2):125-130.

King, T.F. (2009). Rethinking Traditional Cultural Properties? *George Wright Forum,* 26(1):28-36.

Kievit, J.A. (2003). A Discussion of Scholarly Responsibilities to Indigenous Communities. *American Indian Quarterly,* 27(1/2): 3-45.

Lassiter, L.E. (2005). Part 1: History and Theory. In *The Chicago guide to collaborative ethnography*. Pp. 1-24. London: The University of Chicago Press.

LeBeau, A. and LaBounty, A. (2010). A Response to "Indigenous Archaeology: Historical Interpretation from an Emic Perspective" - from a Native American Archaeologist's Perspective. *Nebraska Anthropologist,* 25:21-24.

LeCompte, M., and Schensul, J.J. (2013). *Analysis and interpretation of ethnographic data: A mixed methods approach*. Pp. 79- 109. Lanham: AltaMira Press.

Lewis, D.R. (1995). Native Americans and the Environment: A Survey of Twentieth-Century Issues. American *Indian Quarterly,* 19(3):423-50.

The Louis Berger Group. (2013). Successful Practices For Effective Tribal Consultation. Available at: http://onlinepubs.trb.org/onlinepubs/nchrp/docs/NCHRP25-25%2879%29_FR.pdf.

Low, S. M. and Merry, S. E. (2010). Engaged Anthropology: Diversity and Dilemmas, An Introduction to Supplement 2. *Current Anthropology,* 51(S2):203-223.

Lusignan, S. (2009). Traditional Cultural Places and the National Register. *George Wright Forum,* 26(1):37-44.

Martinez, D. R. (2006). Overcoming Hindrances to Our Enduring Responsibility to the Ancestors: Protecting Traditional Cultural Places. *American Indian Quarterly,* 30:486-503.

McAvoy, L. (2002). American Indians, place meanings and the old/new West. *Journal Of Leisure Research,* 34(4):383-396.

McClelland, L.F. National Park Service. (1997). How to complete the National Register Form. *National Register Bulletin 16a*. Washington, D.C. Available at: http://www.nps.gov/nr/publications/bulletins/pdfs/nrb16a.pdf.

Morse, J.M. and Niehaus, L. (2009). Mixed Method Design: Who Needs It? In *Mixed method design: Principles and procedures.* Pp. 13-38. Walnut Creek, CA: Left Coast Press.

Mung'ong'o, C. G. (2009). Political Ecology: A Synthesis and Search for Relevance to Today's Ecosystems Conservation and Development. *African Journal of Ecology*, 47:192-197.

[NATHPO] National Association of THPOs. (2005). Tribal Consultation: Best Practices in Historic Preservation. Available at: http://www.nathpo.org/PDF/Tribal_Consultation.pdf.

[NATHPO] National Association of THPOs. (n.d.). THPO by State 2011. Available at: http://www.nathpo.org/PDF/THPOs-by-State-2011-alpha-order.pdf.

[NCAI] National Congress of American Indians. (2003). An Introduction to Indian Nations in the United States. Available at: http://www.ncai.org/about-tribes/indians_101.pdf.

[NPS] National Park Service. (2012). Heritage Partnership Program Intermountain Region: Wyoming. Available at: http://www.nps.gov/nhl/contact/imro/IMR_HPP_2012Report_WY.pdf.

National Preservation Institute. (2015). National Preservation Institute: Professional training seminars in historic preservation and cultural resources. Available at: http://npi.org/.

[NCHRP] National Cooperative Highway Research Program, ATR Institute, Migliaccio, G.C., Knoebel, G. Martinez, R., Dexter, A. and Hurd, J. (2011). National Cooperative Highway Research Program, NCHRP Report 690, A Guidebook for Successful Communication, Cooperation, and Coordination Strategies Between Transportation Agencies and Tribal Communities. Available at http://www.trb.org/Main/Blurbs/165472.aspx.

Natural Resources Conservation Service. (2009). Tribal Consultation: A Guide for Natural Resource Conservation Employees. Available at: http://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_021895.pdf.

Nesper, L. (2011). Law and Ojibwe Indian 'Traditional Cultural Property' in the Organized Resistance to the Crandon Mine in Wisconsin. *Law & Social Inquiry,* 36(1):151-169.

[NHPA] National Historic Preservation Act. 16 U.S.C. 470 et seq.

Nie, M. (2008). The use of co-management and protected land-use designations to protect tribal cultural resources and reserved treaty rights on federal lands. *Natural Resources Journal*, 48(3), 585-647

[NDDOT] North Dakota Department of Transportation, Federal Highway Administration, Fort Peck Assiniboine & Sioux Tribes, Turtle Mountain Band of Chippewa Indians, Mandan, Hidatsa, and Arikara Nation, Spirit Lake Dakotah Nation, Sisseton-Wahpeton Oyate, Standing Rock Sioux Tribe, Northern Cheyenne Tribe, and Crow Tribe. (2006). Programmatic Agreement. Available at: https://www.dot.nd.gov/divisions/environmental/docs/programmatic-agreement-tribal-consultation-original.pdf.

Ortner, S. (1989). Introduction. In *High religion: A cultural and political history of Sherpa Buddhism.* Pp. 3-18. Princeton: Princeton University Press.

Ortner, S. (1996). *Making gender: The politics and erotics of culture*. Pp. 1-20. Boston: Beacon Press.

Ortner, S. (1999). *Life and death on Mt. Everest: Sherpas and Himalayan mountaineering*. Princeton, N.J.: Princeton University Press.

Ortner, S. (2006). Introduction: Updating Practice Theory and Power and Projects: Reflections on Agency. In *Anthropology and social theory*. Pp. 1-18 and 129-153. Durham, North Carolina: Duke University Press.

Parker, P.L. and King, T.F. National Park Service. (1998). Guidelines for Evaluating and Documenting Traditional Cultural Properties. *National Register Bulletin 38*. Washington, D.C. Available at: http://www.nps.gov/nr/publications/bulletins/pdfs/nrb38.

Paulson, S., Gezon, L.L., and Watts, M. (2003). Locating the Political in Political Ecology: An Introduction. *Human Organization*, 62(3):205-217.

Phillips, L., Kristiansen, M., Vehviläinen, M., and Gunnarsson, E. (2013). Tackling the Tensions of Dialog and Participation: Reflexive Strategies for Collaborative Research. *Knowledge and power in collaborative research: A reflexive approach*. Eds. Phillips, L., Kristiansen, M. Vehviläinen, M. and Gunnarsson, E. New York: Routledge

Pit River Tribe v. U.S. Forest Service, 469 F.3d 768 (9th Cir. 2006). Available at: http://www.sacredland.org/PDFs/pit_river_decision.pdf.

Plaut, E. (2009). Tribal-Agency Confidentiality: A Catch 22 for Sacred Site Management? *Ecology Law Quarterly*, 36:137-166.

Reed, M. (2008). Stakeholder participation for environmental management: A literature review. *Biological Conservation,* 141(10):2417-2431.

Robbins, P. (2011). *Political ecology a critical introduction* (2nd ed., Critical Introductions to Geography). Hoboken, NY: Wiley.

Rouse, J. (2007). Practice theory. In *Philosophy of Anthropology and Sociology*. Pp. 639-681. Eds. Turner, S.P. and Risjord, M.W. Boston: Elsevier B.V.

Ruppert, D. (2003). Building Partnerships Between American Indian Tribes and the National Park Service. *Ecological Restoration,* 21(4):261-263.

Rylko-Bauer, B., Singer, M., and Willigen, J. (2006). Reclaiming Applied Anthropology: Its Past, Present, and Future. *American Anthropologist,* 108(1), 178-190.

Simpson, Leanne R. (2004). Anticolonial Strategies for the Recovery and Maintenance of Indigenous Knowledge. *American Indian Quarterly, 28,* (3-4), p.373-384.

Smith, L.T. (1999). Imperialism, History, Writing, and Theory. In *Decolonizing methodologies: Research and Indigenous Peoples*. Pp. 19-41. London, UK: Zed Books Ltd.

Smythe, C. (2009). The National Register Framework for Protecting Cultural Heritage Places. *George Wright Forum,* 26(1):19-27.

Spence, M. (1999). *Dispossessing the Wilderness Indian Removal and the Making of the National Parks*. New York: Oxford University Press.

Spoon, J. **(**2013). Different Ways of Knowing, Shared Goals: Applied Sustainability Projects in the Himalayas and Great Basin. In J. Dillard, V. Dujon and E. Brennan eds. *Social Sustainability: A Multilevel Approach to Social Inclusion.* London: Routledge. Pp. 211-232.

Spoon, J. (2014). Quantitative, qualitative, and collaborative methods: approaching indigenous ecological knowledge heterogeneity. *Ecology and Society,* 19(3):33-42.

Spoon, J., and Arnold, R. (2012). Collaborative research and co-learning: integrating Nuwuvi (Southern Paiute) ecological knowledge and spirituality to revitalize a fragmented land. *Journal for the Study of Religion, Nature & Culture,* 6(4):477-500.

Spoon, J., Arnold, R., Lefler, B., and Milton, C. (2015). Nuwuvi (Southern Paiute), Shifting Fire Regimes, and the Carpenter One Fire in the Spring Mountains National Recreation Area, Nevada. Journal of Ethnobiology 35(1): 85-110.

Stapp, Darby C., and Burney, Michael S. (2002). *Tribal cultural resource management: The full circle to stewardship*. Walnut Creek, CA: Altamira Press.

Talle, A. (2007). 'Serious Games': Licences and Prohibitions in Maasai Sexual Life. *Africa: The Journal of the International African Institute,* 77(3):351-370.

Thomas, D. (2006). A General Inductive Approach For Analyzing Qualitative Evaluation Data. *American Journal Of Evaluation,* 27(2), 237-246.

University of Oregon. (2011). Northwest Forest Plan – The First 15 Years (1994-2008): Effectiveness of the Federal-Tribal Relationship. Available at: http://www.reo.gov/monitoring/reports/15yr-report/Effectiveness%20of%20the%20Federal-Tribal%20Relationship%20WEB.pdf.

U.S. Fish and Wildlife Service. (2013). Tribal Consultation Handbook. Available at: http://www.fws.gov/carlsbad/TribalRelations/Tribal_Consultation_Handbook_2013.pdf.

U.S. Fish and Wildlife Service. (n.d.). Employee Pocket Guide. Available at: http://www.fws.gov/info/pocketguide/fundamentals.html.

U.S. Forest Service "National Forest Management Act of 1976" (16 U.S.C. 1600).

U.S. Forest Service. (n.d.). What We Do: Mission Statement. Available at: http://www.fs.fed.us/fsjobs/forestservice/mission.html.

Vaccaro, I., Oriol, B., and Paquet, P.A. (2013). Political Ecology and Conservation Policies: Some Theoretical Genealogies. *Journal of Political Ecology*, 20:255-272.

Van Eijck, M., and Roth, W.M. (2007). Keeping the Local Local: Recalibrating the Status of Science and Traditional Ecological Knowledge (TEK) in Education. *Science Education*, 91(6), 926-947.

Van Willigen, J. (2002). *Applied Anthropology: An Introduction.*3rd ed. Santa Barbara, CA: Greenwood Publishing Group.

Verschuuren, B., Wild, R., McNeely, J.A., Oviedo, G. (2010). *Sacred natural sites: Conserving nature and culture*. London: Earthscan.

Wondolleck, J. (1988). *Public lands conflict and resolution: Managing national forest disputes* (Environment, development, and public policy. Environmental policy and planning). New York: Plenum Press.

Wray, J., Roberts, A., Peña, A., Fiske, S. (2009). Creating Policy for the National Park Service: Addressing Native Americans and Other Traditionally Associated Peoples. *George Wright Forum*, 26(3):43-50.

[Wyoming SHPO] Wyoming State Historic Preservation Office. (2013). National Register of Historic Places: Medicine Wheel National Historic Landmark. Available at: http://wyoshpo.state.wy.us/NationalRegister/Site.aspx?ID=60.

Yablon, M. (2004). Property Rights and Sacred Sites: Federal Regulatory Responses to American Indian Religious Claims on Public Land. *The Yale Law Journal*, 113(7):1623-1662.

Appendix A: List of Research Participants

Michelle Berditschevsky: Former Executive Director of the Mount Shasta Bioregional Ecology Center and former Environmental Coordinator for the Pit River Tribe.

Julie Cassidy: Supervisory Archaeologist and Tribal Liaison for the Mt. Shasta Ranger District.

Amy Crain: State Historian II in the Registration Unit for the California State Office of Historic Preservation.

Maurice Frank Churchill: Cultural Resource Officer for Duckwater Shoshone Tribe, member of the Yomba Tribe with family members that are Duckwater Shoshone.

Darrel Cruz: THPO and Director of the Cultural Resource Department for the Washoe Tribe, as well as Washoe Tribe member.

Doug Deur: Consulting Cultural Anthropologist.

Fred Frampton: Forest Archaeologist for Humboldt-Toiyabe National Forest.

Morning Star Gali: THPO for the Pit River Tribe and Pit River Tribe member.

Gerry Gates: Heritage Resource Program Manager for Modoc National Forest.

Thomas Gates: Cultural Resource Unit Analyst for the California Energy Commission, and former director of the Yurok Tribe's Cultural Resource Department.

Merv George: Hoopa Valley Tribe member and Forest Supervisor for the Six Rivers National Forest.

Rae Gould: Native American Program Specialist for ACHP and member of the Nipmuc Nation.

Dennis Griffin: Archaeologist for Oregon SHPO.

Jan Hollenbeck: Heritage Program and Tribal Program Manager for Mount Baker-Snoqualmie National Forest.

Tom King: Consultant and co-author of Bulletin 38.

Paul Loether: Chief of the National Register of Historic Places and National Landmarks.

John Maher: Heritage Resource and Tribal Relations Program Manager for the Lake Tahoe Basin Management Unit.

Rick McClure: Former Heritage Program Manager and Tribal Programs Manager for the Gifford Pinchot National Forest.

Guy Moura: THPO for the Confederated Tribes of the Colville Reservation.

Anan Raymond: Archaeologist with Fish and Wildlife Service.

Will Reed: Regional Forest Service Heritage Program Manager for Intermountain Region.

Nathaniel Reynolds: Ecologist for the Cowlitz Indian Tribe.

Don Shannon: Cultural anthropologist for Willamette Cultural Resources Associates. Formerly, TCP coordinator for the Confederated Tribes of the Colville Reservation.

Shawn Steinmetz: Archaeologist and ethnographer for the Confederated Tribes of Umatilla.

Tribal Representative: Nuwuvi (Southern Paiute) elder and cultural practitioner.

Appendix B: Informed Consent Form

You are invited to participate in a research study conducted by Kate Monti Barcalow from Portland State University (PSU), Anthropology Department. This researcher is a graduate student, working to fulfill a portion of the requirements for a master's degree. This study is under the supervision of Dr. Jeremy Spoon, Assistant Professor of anthropology at Portland State University. The researcher seeks to analyze the use of traditional cultural property or place (TCP) designations for American Indian ancestral landscapes. This research is intended evaluate the use of TCP designations, and thus identify aspects relating to best practices and approaches for managing American Indian ancestral landscapes. You were selected because of your previous experience with tribes and knowledge about TCP nominations.

If agreed, you will be asked to participate in an interview to gain insight to your perspectives relating to TCPs. In this interview, you will be asked a series of questions about the TCP nomination and management process, and questions connected to particular locations. This interview will be audio recorded to insure the accuracy of handwritten notes, quotations or sentiments shared during the interview. The researcher will transcribe all or part of the audio recording if further analysis or clarification is necessary. You may also be asked to participate in a field visit, where pictures may be taken and you may be asked questions regarding your experiences with the TCP and surrounding area. You may chose not to participate in field visit, and it will not affect your relationship with the researcher or Portland State University.

There may be some anticipated challenges related to your participation, such as taking time away from other responsibilities. In order to use your time wisely, the location and time of the interview will be mutually agreed upon prior to the actual interview. The researcher may discuss information that you may deem confidential or otherwise protected. Additionally, you may find a conversation about sacred sites to be fraught with emotion. Accordingly, your responses are strictly voluntary and any information shared should be at the level that you feel appropriate. Additionally, you may stop the interview at any time. Accordingly, while you may not receive any direct benefit from participating, it is hopeful the study will help increase knowledge regarding TCPs in order to assist tribes, groups, federal agencies, or entities in the future TCP nominations or management.

This research is a chance to tell your story. You may choose to keep your identity confidential, and accordingly every attempt will be made to keep your identity confidential, including using a pseudonym in my notes for the interview and keeping your name in a separate notepad. However, your story could be identified and your confidentiality cannot be guaranteed. You have an option of choosing to keep your identity confidential on the second page of this consent form. Reports generated for this study, and provided to Dr. Spoon, PSU, or other collaborators may be published or distributed. All confidential information including audio recordings, transcripts and related data, will be kept with the researcher at all times or protected in a secured location with password protection or other appropriate safeguards.

Your participation will not affect any current or future relationship you may have with the researcher or Portland State University. If so compelled, you may withdraw from this study at any time without comprising any current or future relationship with the researcher or Portland State University. If you have questions or concerns about your participation in this study, contact: Kate Monti Barcalow, Anthropology Department, Portland State University, P.O. Box 751, Portland, Oregon 97207- 0751; phone number: (614) 327-6314; or e-mail address: barcalow@pdx.edu. If you have concerns about your involvement as a research subject, please contact Research and Strategic Partnerships, Market Center Building 6th floor, Portland State University, (503) 725-4288.

Please check the box for the appropriate level of confidentiality that you would like:

☐ I would like to keep my identity confidential. Please use a pseudonym when referring to me in your notes. I understand that particular characteristics of my story may still expose my identity.

☐ The researcher may use my name in her notes and in subsequent reports, articles, or other documents.

Your signature indicates that you have read and acknowledge the above information has been discussed and you agree to take part in this study. The researcher should provide you with a copy of this form for your own records.

Printed Name: _____

Signature: _____ Date: _____

Appendix C: Case Studies' Site Descriptions

Site	Summary Information
Mount St. Helens (also known as Lawetlat'la by the Cowlitz Tribe and Loowit by Confederated Tribes and Bands of the Yakama Nation)	Site Description • Mount St. Helens is an active stratovolcano within the Cascade Range, and is located in southwest Washington on the Gifford Pinchot National Forest. • The 1980 eruption of Mount St. Helen drastically changed the landscape. • Size: Mount St. Helens National Volcanic Monument measures 110,000 acres, which is included in the Gifford Pinchot Nation Forest's 1,368,300 acres. An elevation of 8,363 feet. Cultural Significance • Mount St. Helens plays an important part in the Cowlitz Tribe's and Yakama Nation's belief system and worldview, as well as traditional practices such as harvesting huckleberries, fishing, stripping cedar bark, and gathering mountain goat wool. • According to the Cowlitz Tribe's tradition, the volcano is an essential element of their creation story as one of the first landforms created by Spilyai (Coyote). Additional stories about Mount St. Helens impart life lessons about the important connection between humans, the environment, and the sacred, as well as educating on proper conduct in engaging the environment and the spiritual. • Above the tree line is considered the most spiritually charged place on the Mount St. Helens landscape for the Cowlitz Tribe. Traditionally, young male and female Cowlitz tribal members would be sent up beyond the tree line elevation in order for their spirit to reveal themselves to the individual. TCP Facts • Size and boundary information: Size of the TCP is 12,501 acres. The boundary is marked by the Loowit trail at about 4,020 feet elevation. • Date of National Register Listing: September 2013. • Tribes and Agencies Involved: The Cowlitz Tribe and Gifford Pinchot National Forest (Forest Service).

	• Eligibility Criteria: The Mount St. Helens' National Register nomination form relies on Criterion A for the listing due to the volcano's importance in the Cowlitz Tribe's and the Yakama Nation's worldviews, origin stories, and other traditional beliefs and practices.
Cave Rock (also known as De ek Wadapush by the Washoe Tribe of Nevada and California)	Site Description • Cave Rock is a landform that was once part of a volcanic vent that formed over five million years ago. This rock formation is located in the Lake Tahoe Basin Management Unit (U.S. National Forest Service) on the eastern shore of Lake Tahoe in western Nevada. • Size: Cave Rock includes approximately two acres of mostly andesite rock and 300 feet of shoreline. The dome measures approximately 800 feet wide and 360 feet high. The cave is located within Lake Tahoe Basin's 154,000 acres. An elevation of 6,348 feet. Cultural Significance • The Washoe Tribe highly value Cave Rock for its spiritual power and importance in Washoe cosmology, and believe it is an essential place for traditional practices that maintain the health of the Washoe Tribe. • Cave Rock is a gathering place for me'tsunge or water babies, which are small beings with powerful medicinal knowledge and abilities that they can impart on medicine men. Only expert Washone medicine men are allowed to visit the site, and women are not even permitted to look at it. The white sand path is also important as a path traveled by medicine men. • Cave Rock is also the site where Ang, a large man-eating bird, collects its victims. • Cave Rock also has pictographs inside the cave. TCP Facts • Size and boundary information: Based on the 1998 determination of eligibility to be included on the National Register, the size was determined to be ten acres. This will likely change as boundary issues are resolved. • Date of Determination of Eligibility for the National Register: Found eligible by Forest Service and Nevada SHPO in 1996, confirmed by Keeper of the National Register in 1998.

	• Tribes and Agencies Involved: Washoe Tribe and Lake Tahoe Basin Management Unit. • Eligibility Criteria: Based on the Record of Decision (ROD) issued in 2003, the Forest Service asserted Cave Rock as eligible under Criterion A based on its importance in the Washoe's traditional practices, beliefs, and worldview. The site is also eligible under Criterion A based on the presence of historic trails and highways. Cave Rock is also associated with important historic Washoe spiritual leaders Welewkuskkush and Henry Rupert, thus making it eligible under Criterion B. Finally, Cave Rock is eligible for the National Register under Criterion D based on the archaeological data recovered regarding shamanic practices, information on the paleoenvironment, and examples of pictographs.
Toquima Cave	Site Description • Toquima Cave is located in the Humboldt-Toiyabe National Forest in Nevada. The rock shelter is a remnant of a volcanic basalt flow and is a part of the larger Toquima Mountain Range. • Size: Humboldt-Toiyabe National Forest totals 6,300,000 million acres. The maximum elevation of trail to Toquiman Cave, which ends at the base of the rock shelter is 7,880 feet. Cultural Significance • Toquima Cave is an important spiritual place for Western Shoshone. • The pictographs, also called rock writing, was used by Shamans to communicate with the spirit world. The rock writing also recorded significant stories and historical events. • Most of the images were applied by hand, primarily using gypsum, hermatite, goethite, and charcoal for pigments. The rock writing at Toquima Cave are two different styles: Great Basin curvilinear and rectilinear. TCP Facts • Size and boundary information: The TCP measures 40 acres. The boundary could not be determined based on public records available. • Criteria: Toquima cave is eligible under Criteria A, B, D. • Date of National Register Listing: April 4, 2002.

	• Tribes and Agencies Involved: Duckwater Shoshone Tribe and Humboldt-Toiyabe National Forest.
Medicine Lake Highlands (also known as Saht Tit Lah by the Pit River Tribe)	Site Description • Medicine Lake Highlands is part of the Cascade Range and is located in Northern California, northeast of Mount Shasta and south of Klamath Falls. The highlands span three National Forest: Modoc National Forest, Klamath National Forest, and Shasta-Trinity National Forest. • Medicine Lake Highlands formed from a broad shield volcano. Medicine Lake sits within a large caldera measuring four miles wide and six miles long. • Size: Size: Medicine Lake Highlands total 200 square miles. The highest elevation is 7,913 feet. Cultural Significance • Medicine Lake Highlands is an important cultural and spiritual place to the Pit River Tribe, Karuk Tribe, Wintu Tribe, Shasta Indian Nation, and Modoc and Klamath Tribes of Oregon. • The area is a part of the Pit River Tribe's and Modoc Indians' (Klamath Tribes) ancestral territories. • Many tribes believe that Medicine Lake has powerful healing powers, and is a place for vision quests and healing. • The Pit River Tribe explains that the Creator and his son bathed in the lake after creating earth, thus leaving behind some of his power in the lake. TCP Facts • Size and boundary information: The Keeper of the National Register's 1999 determination of eligibility for the Medicine Lake Area Traditional Cultural Places District gave the minimum size of 22,000 acres, and further recommended the Forest Service make an inquiry into the extent of important traditional places. The 2007 Historic Properties Management Plan for Medicine Lake Highlands expanded the original determination of the traditional district, and under the management plan approximately 73,000 acres are treated as eligible for the National Register with a boundary that is roughly 6,000 feet in elevation.

	• Criteria: Medicine Lake Area Traditional Cultural Places District meets Criterion A, both because of importance in spiritual beliefs and practices for local tribes and its historical importance in American Indian economies related to trade in obsidian. • Date of Determination of Eligibility for the National Register: 1999. • Tribes and Agencies Involved: Pit River Tribe is heavily involved in the consultation. The Pit River Tribe, Modoc and Klamath Tribes of Oregon, and the Shasta Indian Nations assisted in the development of the Historic Properties Management Plan for Medicine Lake Highlands. The Native Coalition For Medicine Lake Highlands Defense is a group comprised of individuals and representatives from various northern California Tribes involved in protecting Medicine Lake Highlands. Federal agencies involved include the Modoc National Forest, Klamath National Forest, and Shasta-Trinity National Forest, as well as the Bureau of Land Management (BLM) as a permitting agency for geothermal development. The Modoc National Forest (Forest Service) was the lead National Forest for the determination of eligibility. Beyond tribes and federal agencies, the Mount Shasta Bioregional Ecology Center has also been substantially involved in supporting tribes' efforts in protecting Medicine Lake Highlands.
Mount Shasta (also known as *Bohem Puyuik by Winnemem Wintu Tribe, 'ith 'aq'o or Yet by Pit River Tribe, and Tuiship ada or Oou tuko Tueship by Karuk Tribe)*	Site Description • Mount Shasta is stratovolcano located at the southern portion of the Cascade Range in the Shasta-Trinity National Forest in Northern California. • Size: Mount Shasta totals 150,000 acres, which is a part of Shasta-Trinity National Forest that measures 2,100,000 acres. Mount Shasta has an elevation of 14,179 feet. . Cultural Significance • Mount Shasta is part of the ancestral lands of the Winnemem Wintu Tribe, Pit River Tribe, Modoc, and Shasta Indian Nation, and is a place of cultural and spiritual importance. For example, the Wintu Tribe explains that they come from Mount Shasta, bubbling up from the spring in Panther Meadows. • The mountain is considered culturally significant also for tribes with ancestral lands beyond Mount Shasta, such as the Karuk Tribe, Klamath Tribe, and Hoopa Valley Tribe. Many tribes consider the mountain a sacred place, and continue to conduct traditional practices there.

	• The mountain serves as a guidepost on the landscape, giving both spiritual and geographical direction. • A substantial number of non-American Indians also claim Mount Shasta as a place of spiritual importance. Common practices of non-American Indian spiritualists, such as placement of crystals and depositing cremations, can run counter to traditional American Indian practices, as well as forest management practices. TCP Facts • Size and boundary information: The Native American Cosmological District is generally defined by a boundary starting at 8,000 feet elevation, and includes all property above the boundary line. In 2004, agencies modified the property boundary drop below the 8,000 foot elevation around the Old Ski Bowl location. The Native American Cosmological District size now totals 20,283 acres. Panther Meadows is located at 7,500 feet elevation, and is about 12.5 acres in size. • Criteria: The determination of eligibility is based on Criterion A due to tribes' deep cultural connection and historical use of Mount Shasta. • Date of Determination of Eligibility for the National Register: 1994. • Tribes and Agencies Involved: Wintu Tribe, Shasta Indian Nation, Pit River Tribe, Karuk Tribe, Modoc and Klamath Tribes of Oregon. Shasta-Trinity Forest Service manages upper portions of the mountain. The Mount Shasta Bioregional Ecology Center played a role in facilitating the tribes' involvement in the historic preservation process.

Appendix D: Semi-Structured Interview Questions on TCPs

Interviewee:_____

Location and time: _____

Instructions: The following questions will be asked during your interview. These questions may not be asked in this particular order, and there may be follow up questions to particular answers or additional questions based on your experiences and expertise. You may chose not to answer any of the following questions.

1. Please generally describe your role (e.g. work responsibilities, projects, etc.) in working for the tribe/protected area.

2. What have been your experiences with TCPs?
    a. Which ones?
    b. What was your role?

3. How would you describe the relationship between tribes and federal land managers involved with the TCP?

4. What characteristics in a landscape make for a good TCP designation?

5. Are there any ancestral lands that you would like to see deemed eligible as a TCP?
    a. Would you want to nominate those places to the National Register? Why or why not?

6. Are there situations that you know of where a tribe wanted a site deemed eligible and either it was never completed or was found not to be eligible for the National Register?
    a. What happened?

7. What benefit do you think there is in finding a site eligible for the National Register?
    a. What value is there in nominating a site to the National Register?

8. What are the reasons for not going through the process of finding a site eligible for the National Register?
    a. What are the reasons for not nominating a site for the National Register?

9. What do you think are best practices in managing a TCP?
    a. Do you think there should be a formal agreement between agencies and tribes regarding TCP management?
        i. If yes, what issues would the formal agreement address?

b. Do you know if there is a practical difference in the management of TCPs that are eligible for the National Register but have not been nominated and those that are listed on the National Register? If yes, please describe what the differences are.

10. Are there any advantages regarding funding or grants for a site that is listed on the National Register?
    a. Do you know of funding directly associated with having a site listed on the National Register?

11. Is there other relevant policy or legislation regarding regulating American Indian ancestral landscapes?
    a. How would you compare other legislation to National Historic Preservation Act?
    b. Are there other types of protections you would like to see for Native American ancestral lands? If yes, please describe.

12. Any advice for those who will be writing a nomination?

Appendix E: Summary Data Points for Case

TCP and Culturally Affiliated Tribes	Consultation	Nomination or Determination of Eligibility Process	Mitigation and Management	Benefits of NHPA	Limitations of NHPA
Mount St. Helens (Cowlitz Tribe and Confederated Tribes and Bands of the Yakama Nation)	• Nomination possible because of good working relationship, including a level of trust and willingness to invest in the working relationship from both the agency and tribe. • The personalities involved were essential to a good working relationship. • Support from tribe leadership and agency's upper management necessary for the nomination. • Support on the national level key motivator. Funding to carryout consultation and conduct ethnographic research essential.	• Nomination was a collaborative process, done without the threat of an impending project. • Yakama Nation chose not to be a part of the nomination process, but indicated support through an article in the tribe's newspaper. • Idea for nomination occurred during an annual meeting. Proposed by Forest Service employee as a chance to collaborate on a cultural project. • Strong nomination possible due to the extensive amount of ethnographic information already available for Mount St. Helens, and thus ability to substantiate claims and connect the TCP to multiple criteria under NHPA and Bulletin 38.	• No impending development projects threatening Mount St. Helens, due in part to the protection offered by the National Volcanic Monument designation. • Tribe and agency see potential co-management opportunities. For example, surveying of mountain goats. Opportunity to reestablish traditional practices, such as sending young tribal members above tree line to find their tamanawas (spiritual power).	• Raises public awareness of Cowlitz's relationship and enduring presence on the landscape, • Showcases cooperative relationship between Cowlitz Tribe. • Public education opportunities through outreach lectures or site visits, publications, and news releases • Nomination helped augment the healthy relationship between the agency and tribe. • Opened the door for future co-management projects.	• The TCP requires use of a colonial framework, particularly for the boundary, in order to assert cultural affiliation with a place undoubtedly part of the Cowlitz ancestral landscape. • TCP process may not be appropriate in other contexts, such as protecting burials since writing the information down is culturally inappropriate for Cowlitz.

TCP and Culturally Affiliated Tribe	Consultation	Nomination or Determination of Eligibility Process	Mitigation and Management	Benefits of NHPA	Limitations of NHPA
Medicine Lake Highlands (Pit River Tribe, Karuk Tribe, Wintu Tribe, Shasta Indian Nation, and Modoc and Klamath Tribes of Oregon)	• Consultation process mixed, based on personalities. Pit River THPO sees tribe and agencies relationship as generally difficult. • Failure to consult early. • Culturally competent federal employees often do not stay in their positions long. • Upper management was the reason management decisions ultimately adopted and whether certain employees supporting tribes maintained their position. • Forest Service employee recognizes importance of going beyond compliance to build better relationships with tribes. • Forest Service employee says agency should communicate better its legal duties and limits.	• Determination of eligibility done in response to proposed geothermal developments. • Agencies believed initial ethnographic work done in 1999 only looked at individual sites. Additional ethnographic work done to show the interconnectedness of the sites and show how the traditional practices and values translate to the landscape. • Original determination of recognized 22,000 acres as eligible for the National Register. Due to the recommendation of Keeper of the National Register and a negotiated MOA regarding the management of the Medicine Lake Highlands, the historic district was expanded to 73,000 acres.	• Eligibility done in response to the proposed Fourmile Hill and Telephone Flat geothermal developments. • Former Pit River Tribe employee thought ACHP key in facilitating the discussion. • Negotiations led to decision denying Telephone Flat project (later reversed) and a negotiated MOA regarding general management issues. MOA covers geothermal development, as well as issues with noise and oil pollution from motorboats, access for traditional practices and camping, and general issues regarding protecting resources.	• Draws attention to cultural importance of the place. • Helpful in protecting against the geothermal projects, but does not guarantee protection. • NHPA raises requirements regarding consultation. • Gives an agency a means to justify management decisions made. • Possible co-management opportunities.	• NHPA consultation process did not protect the historic district from the Fourmile Hill geothermal project • Forest Service employee sees cost associated with the determination of eligibility as a substantial barrier. Cost for a nomination to the National Register is even higher. • Confidentiality issues. Some places within the district the tribe would not want to list individually on the National Register, due to fear of exposing the individual places to harm.

TCP and Culturally Affiliated Tribe	Consultation	Nomination or Determination of Eligibility Process	Mitigation and Management	Benefits of NHPA	Limitations of NHPA
Mount Shasta (Winnemem Wintu Tribe, Pit River Tribe, Modoc, and Shasta Indian Nation)	• Consultation complex, sometimes contentious. Some issues adequately addressed, others improperly handled. • Tribes not consulted on initial issuance of the Ski Bowl's special use permit. Through consultation, permit ultimately denied. • Consultation process was an educational process for agency, project developer, and public about the cultural importance of TCP for tribes. • Pit River THPO sees issue with lack of frequent consultation and agencies consulting with tribes individually, thus all tribes and agencies may not be on the same page with management.	• Particularly contentious process, especially with determination of the boundary. • Tribes believed appropriate original proposed boundary that included the entire mountain. • Opposition from private landowners and project developers regarding the determination of eligibility, which led to political pressure from a local congressman to request the Keeper of the National Register to reconsider of the boundary determination. • Keeper of the National Register conducted site visit and a hearing regarding the boundary. This resulted in a reduction in the boundary determination to a higher elevation.	• Proposed redevelopment of Ski Bowl major concern. Even with boundary change, permit denied for the ski area because of adverse effect. • Management decisions: build low impact trails, remove harmful trails, revegetate, and geothermal development denied. • Management issues remain: bus tours, potential ski and geothermal development. • Pit River THPO: management should include tribes. • Forest Service employee believes management plan would be helpful.	• NHPA process ultimately lead to denial of the development of the ski area and geothermal projects. • Forest Service employee sees the TCP concept as a historic property type that is engrained in the regulatory framework. • Forest Service employee sees it as a way to acknowledge the cultural values of a place. • Former Pit River Tribe employee saw NHPA process a means to educate the community as to the cultural importance of the mountain.	• NHPA may require consultation with tribes; however, the form and effectiveness is not guaranteed. • Forest Service employee recognizes that the concept of TCP is problematic in that it does not necessarily align meet with tribes' views of the land, such as with the determination of the appropriate boundary.

TCP and Culturally Affiliated Tribe	Consultation	Nomination or Determination of Eligibility Process	Mitigation and Management	Benefits of NHPA	Limitations of NHPA
Cave Rock (Washoe Tribe of Nevada and California)	• Good working relationship between Washoe Tribe and Forest Service helped with development of management decisions and National Registration evaluation, as well as aiding the tribe and agency understanding when perspectives differed for specific actions. • Cooperative relationship, effective communication: open and honest, and building personal relationships essential to consultation process. • Support from the Forest Service's Forest Supervisor advancing management decisions, particularly the ban of rock climbing.	• Nomination process generally positive. • Formal determination of eligibility sought from National Keeper because the agency knew there would be opposition in the determination. • Agency and tribe split the cost of the ethnographer. • Ethnography for EIS helped Forest Service appreciate importance of the place. • Washoe Tribe prefers larger boundary, but multiple property owners make process more complicated. Thus, decision stick to primarily National Forest lands. Still negotiating boundaries with NDOT, because Keeper of the National Register requires inclusion of Highway 50 in nomination.	• Rock climbing major impetus for determination of eligibility. • Ban of rock climbing based on a determination of eligibility to the National Register challenged by rock climbers. Rock climbing temporarily permitted while Forest Service conducted an EIS. • Rock climbing ban appealed, but eventually upheld by Ninth Circuit. • Additional mitigation taken: removing all climbing rock bolts, masonry floor, and graffiti. • Monitoring for other adverse effects to Cave Rock.	• Determination of eligibility to the National Register essential in allowing the Forest Service to make the management decisions. • Administrativel y helpful for Washoe countering any future projects.	• Generally, TCP concept may not be appropriate in a different context where the tribe may want to keep a place's location confidential. • TCP concept also limited for other places because a site may not meet NHPA criteria, but may still be important to the Washoe Tribe.

TCP and Culturally Affiliated Tribe	Consultation	Nomination or Determination of Eligibility Process	Mitigation and Management	Benefits of NHPA	Limitations of NHPA
Toquima Cave (Western Shoshone)	• Consultation process generally positive. • Federal employee turnover slowed consultation. Tribe employee thinks hard to build trust with high turnover. Agency employee sees constant change in agency personnel and tribal council as reason MOU for consultation not complete. • Duckwater Shoshone employee sees tribe as having better relationship with the Humboldt-Toiyabe National Forest than other agencies. • Personality key to good relationship: trust, open communication, listening, and early consultation. Tribe employee sees trust important to confide confidential information.	• Nomination process generally positive, done on a proactive basis. • Nomination offers level of protection; however, tribe and agency recognize does not guarantee protection. • Turnover in personnel and editing process to make sure the Forest Service, Duckwater Shoshone, and reviewing agencies (Nevada SHPO and NPS) were satisfied with the final application prolonged the nomination process. • Viewshed from the cave essential to maintaining the character and value of Toquima Cave. The TCP includes the 40 acres surrounding the cave, in order to ensure the protection of the viewshed.	• Minimal mitigation or management issues. • The 40 acres surrounding Toquima Cave was taken of the mineral land entry for mining 40 years ago. • Because the place is so public and well-known, it is well monitored. • Fence installed at mouth of the cave in 1983 to protect against looters and graffiti. This fence was updated in 2013. Tribes are given the combination to the fence in order to visit the cave.	• Tribe employee recognizes that protection is not guaranteed, but NHPA process offers a means to voice tribe's concerns. • Forest Service employee agrees protection not guaranteed and that other legal mandates must be balanced with NHPA, but that land managers will be more cautious with sites evaluated as eligible and may be even more cautious with places that are listed.	• Tribe employee is afraid of listing other sites if they are not very well known publically, out of fear of exposing the place to harm. • Forest Service employee sees cost associated with the determination of eligibility as a substantial barrier. The cost for a nomination to the National Register is even higher.