Viewing Sacred Lands Through the Federal Lens

Nicholas Shankle

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Viewing Sacred Lands Through the Federal Lens
An Examination of the Interconnected Relationships between the Federal Government, Tribal Nations, and Academia Through the Implementation of Traditional Cultural Properties

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Thesis

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Traditional cultural properties have become one of the few avenues Indian Nations have to protect off-reservation lands. This thesis examines how the Federal Government, Indian Nations, and academia interact with one another given the creation and management of cultural heritage sites. Decolonizing methodologies are paramount to understanding the depth to which this relationship has gone within the federal preservation framework. Three case studies were used to explore how the Federal Government, Indian Nations, and academia interact with one another. The first looks at the conflict over the proposed construction of the Crandon Mine in Wisconsin. The second case study explores the history leading up to the creation of the Badger-Two Medicine Traditional Cultural District in Montana. The third is a U.S. Air Force Tribal Relations training project that provides a glimpse into the governmentality which has fueled many of the frictions between Indian Nations and the Federal Government. The results indicate Academia working with Indian Nations can alter federal preservation policies. Traditional cultural properties have the potential to protect intangible cultural heritage and the use of traditional cultural property designations for the preservation of off-reservation lands is still in its infancy, allowing for further growth.
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In Memory of
Neil Lloyd Shankle
Chapter One:

Introduction and Methodologies

“Governmentality allows insight into the relationship between liberalism, science, colonization, and stewardship of the past. The relationship between science, colonialism and stewardship provides a useful historical background to the development of CRM...”  
(Smith 2004:68)

1.1 Introduction

This thesis examines the complex relationship between the Federal Government, Indian Nations, and academia using three case studies. The case studies are intended to provide evidence that will address the following research question: how has academia affected federal policies relevant to natural and cultural resource management and the protection of off-reservation lands using Traditional Cultural Property (TCP) designations?

The first case study features the controversial construction of the Crandon Mine in northern Wisconsin. This case study exemplifies how the Federal Government, state government, and Indian Nations have struggled to protect nonpublic lands. Second, the Badger-Two Medicine Traditional Cultural District in northwestern Montana is a case demonstrating the process through which a TCP designation can protect a landscape. The third case study involves a Department of Defense (DoD) Tribal Relations training project. The importance for including this case study is twofold. First, the Project demonstrates how academia and the Federal Government interact with one another. Secondly, the case study exists as an excellent introduction to how federal policies play out.

The theoretical framework for the analysis of these case studies is grounded in decolonization. Using a lens of decolonization, it is possible to understand how extant federal preservation framework perpetuates colonial perspectives leading largely to the present frictions between Indian Nations and the Federal Government.

Prior to 1990 the Federal Government had failed to address indigenous issues regarding preservation. Academia, represented through academics working within the
Federal Government, drafted policies and legislation supporting indigenous perspectives. This change in policy was fueled by Indigenous activism and the changing perspectives within the academic community coming out of the 1980s. These policy changes effectively restructured federal preservation framework. Unfortunately, because of the size of the Federal Government this process has evolved slowly. This restructuring, denoted primarily by the passing of legislation such as the Native American Graves Protection and Repatriation Act (NAGPRA), Bulletin 38, and the 1992 amendment of the National Historic Preservation Act (NHPA) was made possible in large part due to a reciprocal relationship between academia and the Federal Government fostered during the 1930s and 1940s. (Harrison 2013) This relationship is not a closed circuit however, and as understandings and interpretations of reality change within academia the potential to change federal policies is ever evolving.

When referring to academia for the purposes of this paper it is not limited to collegiate institutions but also includes academics who have moved into the private sector i.e. CRM firms, SHPOs representing State Government, and Federal Government employees. This distinction is important because Federal and State Governments as well as the private sector maintain an educational requirement when hiring. Having such a requirement draws a direct connection between the policies being drafted within those institutions and the academic community. It is naive to think that the educations and research methodologies instilled in academics while obtaining academic degrees are simply left within the institutions when those academics move into the private and governmental sectors. Academia has occupied a multifaceted role within the larger relationship extant between the Federal Government and Indian Nations. Academia, in many ways, has acted as a medium through which the Federal Government and Indian Nations have interacted, as the Federal Government relies on the results of academic research to understand other nation (Getches et al. 2011). This makes academia the greatest informant the Federal Government can utilize. Because of this need the self-legitimizing relationship between the Federal Government and academia has become institutionalized within the federal framework. When interacting with Indian Nations the Federal Government has come to vest the ultimate authority in academia and places more
weight in its perspectives and interpretations than those held by Indian Nations (Smith 2004).

Another component to the complex symbiotic relationship between the Federal Government, Indian Nations, and academia is that the prevailing colonial framework directs the Federal Government to interact with Indian Nations as a singular entity comprising of one ambiguous culture. This fact is extremely important when exploring the simultaneous positive and negative affects federal legislation can have on indigenous communities. Altering the federal framework to recognize the heterogeneity of indigenous communities in the United States is an important first step to decolonization.

Understanding the relationship between the Federal Government and academia, Indian Nations work with academia to shape how they are perceived by the Federal Government (Smith 1999). This act constructs a governmental identity which each Tribal Nation through the assistance of academia must shape to represent not only their nation but fit into the pan-Indian framework the Federal Government operates under. Support for indigenous conceptualizations of land/natural and cultural resources has, throughout U.S. history, both hindered and supported Indian Nations (King 2003).

Land has been one of primary reasons the Federal Government and Indian Nations have had to interact. Presently the preservation and management of off-reservation lands has become a major point of interface between the Federal Government and Indian Nations. The National Park Service (NPS) Bulletin 38 in 1990 formalized the concept of Traditional Cultural Properties (TCPs), providing Indian Nations with a mechanism, within the framework of the Federal Government, to ascribe importance to lands not held in trust. This is culturally significant because prior to 1990 Indian Nations had attempted to protect off-reservation lands through the American Indian Religious Freedoms Act of 1978 (AIRFA). As will be explored later, the utilization of AIRFA as a means to preserve off-reservation lands created a ripple effect within the Federal Government culminating in the need for Congress to pass the Religious Freedoms Restoration Act (RFRA). This was largely due to the inability of the U.S. Supreme Court to support the complex relationship that exists between the Federal Government and Indian Nations. It is only after 1990 and the inability of the courts to protect Native American rights that the evolving relationship between the Federal Government and academia became more supportive of Indian Nations.
During the last fifty years, that dialog within the anthropologic community has focused on the effects of the shared colonial frameworks extant between the federal and academic relationship. The foundation for this introspective exploration was laid by people like Frantz Fanon (1961), Albert Memmi (1967), and Edward Said (1978,). Furthering the dialog of the depth to which academia and the creation and perpetuation of governmental structures have gone are people like Laurajane Smith (2004), Taiaiake Alfred (1999), and Linda Tuhiwai Smith (1999). Often, as represented by Linda Smith and Taiaiake Alfred, it has been the voices and insights of scholars from within the academic “Other” who are able to introduce just how intertwined academia and governmental structures have become.

1.2 Decolonization

There is no central paradigm unifying all of the approaches to decolonization. The methodologies needed to decolonize must be varied and interdisciplinarily sourced so as to meet the infinite iterations of colonial structures as they appear in academia and the Federal Government. For this reason, decolonizing methodologies run the spectrum from ways of conceptualizing landscapes to the strictest and most straight forward application of violent revolution. Linda Smith points out how “some approaches have arisen out of social science methodologies, which in turn have arisen out of methodological issues raised by research with various oppressed groups [and] some projects invite multidisciplinary research approaches” (Smith 1999:142).

Though there is no exact definition for decolonization, and despite the varying methodologies, the underlying tenets hold that the current hegemonic powers are nothing more than colonialism manifest through global capitalism. This, combined with the lingering colonial perspective institutionalized by academia and legitimized by the nation state, have perpetuated, and in many ways provided longevity to the institutional and structural violence constructed under colonialism (Anderson 2006). Though this thesis does not focus on Native women and sexual violence, the argument made by Andrea Smith that “putting Native women at the center of analysis compels us to look at the role of the state in perpetrating both race-based and gender-based violence” represents a primary goal
of decolonization (Smith 2005:3). It is only through the practice of placing the most marginalized and oppressed at the center of one’s conceptualization of the world that the fullest measure of decolonization can be realized (Anderson 2007; Incite! 2007; Hernández 2002; Shaw 2006).

The goal of decolonization is to alter the institutionalized structures which perpetuate such violence so as to provide a greater level of tolerance and opportunity within any given community. By no means is this a simple task, and one can argue that because of the depth to which colonialism has been institutionalized within this country, to realize any measure of meaningful decolonization, there needs to be a large diversity in the available methodologies. The underlying assumption made by decolonization is that the structures within western society can be altered, removed, and or replaced without the complete restructuring of western conceptualizations: “Attempting to decolonize without addressing the structural imperatives of the colonial system itself is clearly futile” (Alfred 1999:70). The mechanism through which these methodologies can be applied to institutional infrastructures can be found in the many fields of applied anthropology, specifically those that support the Cultural Resource Management, the field most likely to address TCPs.

In her book “Decolonizing Methodologies” Linda Smith lays out “twenty-five indigenous projects” (1999:142). The term project is somewhat misleading; what Smith is providing to the reader are categories which should be at the foundation of decolonization and can be applied within most academic fields and governmental structures. Important to CRM and TCPs are her categories of claiming, reframing, naming, and protecting (Smith 1999:143-144; 153-154; 157-158). In explaining the concept of claiming, she states that, “in a sense colonialism has reduced indigenous peoples to making claims and assertions about our rights and dues.” She argues, “Indigenous peoples, however, have transformed claiming into an interesting and dynamic process.” At the core of this process is the act of naming. Naming is simply “…renaming the world using the original indigenous names” (Smith 1999:157).

The implications of the act of naming are innumerable. For example when looking at the Crandon Mine case study in Chapter 3.2 Glenn Reynolds (2007) recalls one of the first steps taken at the start of the Mushgigamongsebe District Report was to rename the
landscape. From the perspective of the project anthropologists, the act of renaming the landscape revealed the depth to which the physical terrain supported local Indian Nations’ cultural conceptualization of place. With this data, the Mushgigamongsebe District Report attained a level of authenticity that would not have existed through the utilization of Western conceptualizations of a landscape as represented by the ascribed English names. Indeed, “…Western notions of cultural authenticity require that indigenous people must match a perceived ideal of indigenousness that is ahistorical, unchanging, and pure from foreign influences…” (Andrews and Buggy 2008:69). Reframed by an indigenous community, this notion of authenticity can be used as a tool to aid in the manipulation of federal structures and to obtain a favorable outcome within the judicial system.

In effect the acts of naming carried out by the immigrating populations form the “Old World” egocentrically colonized the landscapes, effectively framing it for their needs: “…the aim was not to have New London succeed, overthrow, or destroy Old London, but rather to safeguard their continuing parallelism” (Benedict 2006:191).

So, by ascribing European or Asian place names to North American landscapes, the immigrating populations effectively laid the foundation for cultural genocide. The act of claiming a landscape and renaming it through indigenous conceptualizations inherently begins to decolonize a landscape. Applied anthropologists such as Reynolds (2007) working with and within indigenous conceptualizations of landscapes are thus helping to affect how indigenous communities construct their federal identities. In other words applied anthropologists who attempt to affect federal conceptualizations through the incorporation of indigenous perspectives redefine federal interpretations of tribal sovereignty.

The simple but powerful act of renaming creates a thread which binds and legitimates the claiming, protecting, and reframing categories. Naming a landscape and its features provides the physical and historic context to fulfill the act of claiming. In choosing to claim a name for an idea, world view, or landscape and all that exists within it, the process of framing and reframing an issue or perspective is realized by those indigenous communities attempting to assert their sovereignty.

It then becomes the job of the applied anthropologist to ensure that federal policy is created within an atmosphere which is more inclusive of indigenous perspectives. In
effect, by supporting indigenous perspectives the long standing paternalism extant within the Federal Government and academia can be lessened. Otherwise Smith’s argument—“One of the reasons why so many of the social problems which beset indigenous communities are never solved is that the issues have been framed in a particular way”—continues to hold true (Smith 1999:153). This is particularly salient when considering current CRM practices, especially traditional cultural properties, and the outcomes and accompanying conceptualizations associated with them.

Protecting “is concerned with protecting peoples, communities, languages, customs and beliefs, art and ideas, natural resources and the things indigenous peoples produce” (Smith 1999:158). Protecting then becomes the overarching method through which, claiming, reframing, and naming can be realized for indigenous communities. Regarding Traditional Cultural Properties the desire and drive to protect a landscape directs the process of reframing. The creation of a TCP has the potential if performed following the above decolonizing methodologies to not only promote the sovereignty of Indian Nations, but also begin to alter the foundation of the western colonial perspectives codified within federal preservation laws and policies.
Chapter Two:

Historical Context

“As the human beings and as the people, our history goes back to the beginning of the creation story. As Indians our history starts with the arrival of the Europeans” (Trudell 2005).

2.1 The Past as it Influences the Present

With the “closing” of the American Frontier in 1890, the United States manufactured itself a new identity, that of a nation bounded simply by four borders, the Atlantic, the Pacific, Mexico, and Canada (U.S. Department of the Interior). An accompanying national biography reflected a profound changes in consciousness that, “…by their very nature…[brought]…characteristic amnesia” (Anderson 2006:204). The United States of America became a community held together by a nationalistic form of capitalism, roughly regulated by the U.S. constitution, with a biography and historic consciousness largely void of Indian Nations. This new national consciousness concealed the fact that the United States is the only nation on the planet which includes 566 sovereign nations occupying 326 separate reservations within its borders (USDOI 2016). The Federal Government holds roughly 2.3 percent of its total landmass (56 million acres) in trust with Indian Nations and in addition there are roughly 10 million acres within the exterior boundaries of these reservations held by individuals.

Before exploring the historical foundations of U.S. preservation laws and policies, it is essential to provide an overview of how the Federal Government’s political and economic interactions with Indian Nations shaped the construction of a pan-Indian framework, legitimized by the judiciary, ultimately leading to the current federal relationship. To understand the governmentality which has grown out of the relationship between academia and the Federal Government, it is first necessary to be aware of the historical context through which the present day system—and the current significance of TCPs.
Prior to the formation of the U.S. Federal Government the British Empire treated Indian Nations in much the same manner as it treated other European nations with some exceptions. One exception was the lack of enforcement of agreed upon territorial boundaries; this was due in large part to the complexities of British Imperial colonialism within the new world. By the mid-1700s, the American colonies had conceptually begun to redefine their relationship to the British Empire. An outward manifestation of this conceptualization was the disregard for The Royal Proclamation of 1763. By ignoring the recognition of Indian Nations sovereign rights to the land, the colonies firmly established the foundation for later U.S. land claims. The colonies, as they later became states, did not relinquish this disregard of centralized governance and pushed the fledgling U.S. Federal Government in the same way it had the British Empire. States, acting independently of the Federal Government, often illegally continued to encourage settlement within Indian country. Given the pressures of independent state actions and the desire to maintain a centralized government, the Federal Government through its several incarnations (i.e. as it existed under the continental congress, the articles of confederation, and finally under the U.S. constitution continually) reasserted the sovereignty of Indian Nations through the prohibition of direct state involvement with Indian Nations.

The U.S. Federal Government, which during the Revolutionary War was controlled by the Continental Congress, utilized the process of treaty making in much the same manner as the British Empire to control state entanglement with Indian Nations. The Treaty of Fort Pitt, signed in 1776 with the Delaware and ratified by the Continental Congress in 1778 is considered the first U.S. treaty with an Indian Nation. Given the pressures from the states and the political, economic, and military fragility of the newly formed nation, the Federal Government began to develop a policy for the interaction with Indian Nations under the leadership of the then Commander in Chief of the Continental Army George Washington. The foundations of this policy can be seen in a letter from George Washington to James Duane in 1783:

…the Settlemt [sic] of the Western Country and making a Peace with the Indians are so analogous that there can be no definition of the one without involving considerations of the
other… and the propriety of purchasing their Lands in preference to attempting to drive them by force of arms out of their Country; which as we have already experienced is like driving the Wild Beasts of the Forest which will return us soon as the pursuit is at an end and fall perhaps on those that are left there; when the gradual extension of our Settlements will as certainly cause the Savage as the Wolf to retire; both being beasts of prey tho’ they differ in shape. In a word there is nothing to be obtained by an Indian War but the Soil they live on and this can be had by purchase at less expense, and without that bloodshed, and those distresses which helpless Women and Children are made partakers of in all kinds of disputes with them (Getches et al. 88:2011).

Though the reader can never truly know the mind of George Washington, the themes within this letter play out to the present. Washington appears to be both recognizing the sovereignty of Indian Nations and condemning them as subhuman. Time and again throughout this country’s history the Legislative, Judicial, and Executive branches of the Federal Government have parroted this stance, both supporting and condemning Indian peoples while providing the maximum amount of protection for non-Indian Americans. The other theme within this letter which has a great bearing on federal and Indian relations is that American expansion regardless of its legality, will lead to the removal of Indian Nations. This belief drove federal policy for the next 185 years. As such, Treaties have never been seen as truly permanent and the states feel justified in pressuring Indian Nations any way they can. Given the economic burdens treaties place on the Federal Government, this theme underlies the federal support of assimilation policy as well. The sooner Indian Nations assimilated into American society, the fewer funds the Federal Government would have to allocate to their needs.

After 1890, the Federal Government viewed all land within the boundaries of the United States as its own. From 1890 on Chief Justice Marshall’s interpretation of the federal trust responsibility as expressed through the three court cases making up the
Marshal trilogy\(^1\), became even more poignant. It is at this point that the Federal Government fully embraced the notion that Indian Nations should and would simply disappear if the right pressures were applied. These pressures came in many forms, among them, continued armed conflict, the use of allotment to diminish tribal lands, an increase in the number of Indian Industrial Schools, the termination of tribal recognition, and the continued suppression of tribal governments through Supreme Court precedents.

### 2.2 History and Effects of the Judiciary on Indian Nations and Indian Lands

The legislative body of federal Indian law provides a means of understanding how the Federal Government and much of western society have come to understand Indian Nations and land. A landmark land/property rights cases heard by the U.S. Supreme Court was *Johnson v. M’Intosh* 1823. The landmark case which had been foreshadowed in 1810 through *Fletcher v. Peck* ruled that Aboriginal land title is extinguished “by purchase or conquest” exclusively by the Federal Government (Getches et al. 2011:70). The precedent set by this ruling meant that lands purchased by the states or individuals prior to the formation of the Federal Government from Indian Nations and or tribal individuals are still considered federally owned lands. It is important to note that in the 1823 decision,

Marshall avoided the two logical extremes: that discovery erased all Indian title and that Indians held fee title unaffected by discovery. Those positions “produced a cruel dilemma: either Indians had no title and no rights or federal land grants on which much of our economy rested were void.” Felix S. Cohen, Original Indiana Land Title, 32 Minn. L.Rev. 28, 48 (1947) (Getches et al. 2011:70).

Ultimately this decision “codified the medievally-originated doctrine of discovery as a root of all land titles under U.S. law, eschewing the need or propriety of questioning its contemporary moral legitimacy…” (Getches et al. 2011:70). As a legal foundation, this perspective legitimizes and supports Anderson’s (2006:204) argument that as nations
create their own identities, they conveniently forget those aspects of reality which do not support their new identity. This becomes most apparent post 1890 when the country looks to its new identity.

Following *Johnson v. M’Intosh*, in 1831 Justice Marshall delivered the court’s opinion in *Cherokee Nation v. Georgia*, presenting the second case in the Marshall trilogy, arguing:

> Though the Indians are acknowledged to have an unquestionable, and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations (Wilkinson 2004:146).

In questioning the sovereignty of Indian Nations Justice Marshall now had to define this new relationship. This was done in *Cherokee Nation v. Georgia* when Justice Marshall determined that Indian Nations within the borders of the United States were to be regarded as “domestic depend nations” (Wilkinson 2004:146). After *Cherokee Nation v. Georgia* the Federal Government’s interpretation of Marshall’s new definition of nationhood and hence, tribal sovereignty, held that Indian Nations within the U.S. were now wards of the Federal Government, relinquishing all rights. This interpretation was supported by the states and legitimized by the support of then President Andrew Jackson. Supporting this interpretation of a wardship created a dilemma within the Federal Government given the country’s continued expansion into new Indian Territory. If the Federal Government did not honor the sovereignty recognized through current treaties with Indian Nations, there would be no weight behind new treaties. Such an interpretation and the creation of a national dilemma was not Marshall’s intention and in 1832 in *Worcester v. Georgia* justice Marshall delivering the opinion of the court arguing that, “This relation was that of a nation claiming and receiving the protection of one more powerful, not that of
individuals abandoning their national character and submitting as subjects to the laws of a master” (Wilkinson 2004:149).

The self-serving and anti-sovereignty interpretation of Cherokee Nation v. Georgia, by the Federal Government was in 1886 finally given voice by the Supreme Court. Justice Miller’s opinion in United States v. Kagama argued,

In the first of the above cases [Cherokee Nation v. Georgia] it was held that these tribes were neither states nor nations, had only some of the attributes of sovereignty, and could not be so far recognized in that capacity as to sustain a suit in the supreme court of the United States.

Furthermore,

In the opinions in these cases they are spoken of as ‘wards of the nation;’ ‘pupils;’ as local dependent communities. In this spirit the United States has conducted its relations to them from its organization to this time.

In interpreting Chief Justice Marshall’s opinions to mean that Indian Nations relinquished all rights to the Federal Government, the government could now officially interact with Indian Nations and the lands they occupied as separate and distinct entities. From this point forward, Indian Nations would increasingly struggle to maintain federal recognition of their lands regardless of the now direct oversight of Tribal criminal jurisdiction. The lack of recognition of indigenous land rights is largely due to the Federal Government’s inability to view land as a cultural entity.²

Prior to Justice Miller’s 1886 limitation of tribal sovereignty, the Federal Government under the guidance of Andrew Jackson used their interpretation of Cherokee Nation v. Georgia to legitimize the passing of the Indian Removal Act in 1830. For the next 100 years until the passing of the Indian Reorganization Act of 1934, the Federal
Government kowtowed to the pressures of the states and supported the removal of Indian Nations from their ancestral lands.

Perhaps fearing such an outcome, and at the same time fearing the encroachment by states on federal jurisdiction in 1832 Chief Justice Marshall pushed back in on both fronts. Marshall stated in *Worcester v. Georgia*,

The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the Government of the United States.

Furthering his argument that “domestic dependent” did not imply complete submission, Marshall continued,

The Indian nations had always been considered as distinct, independent political communities retaining their original natural rights as undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed, and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term “nation,” so generally applied to them, means “a people distinct from others.” The Constitution, by declaring treaties already made, as well as those to be made, to be the supreme
law of the land, has adopted and sanctioned the previous
treaties with the Indian nations, and consequently admits
their rank among the powers who are capable of making
treaties. The words “treaty” and “nation” are words of our
own language, selected in our diplomatic and legislative
proceedings by ourselves, having each a definite and well
understood meaning. We have applied them to Indians as we
have applied them to the other nations of the earth. They are
applied to all in the same sense.

Justice Marshall’s denial of state’s rights codified the dilemma within the Federal
Government revolving around the meaning of tribal sovereignty and tribal title to the land.
With the Legislative and Executive branches in agreement over their want to remove
Indian Nations there was little the judiciary could do, and with Marshall’s death in 1835,
judicial support for tribal matters became sporadic.

Support for tribal sovereignty through the judiciary arose again in 1883 under Ex
parte Crow Dog in which the Supreme Court argued that Indian Nations had the right to
prosecute other tribal members (Harring 1994). This standing was largely curtailed in
1885 with the U.S. Congress passing the Major Crimes Act, which was codified in 1886
Trilogy on their head when he argued that the domestic dependent relationship was truly
one of a parental nature. Justice Miller further distorted Marshall’s opinions when he argued,

These Indian tribes are the wards of the nation. They are
communities dependent on the United States,—dependent
largely for their daily food; dependent for their political
rights. They owe no allegiance to the states, and receive
from them no protection. Because of the local ill feeling, the
people of the states where they are found are often their
deadliest enemies. From their very weakness and
helplessness, so largely due to the course of dealing of the Federal Government with them, and the treaties in which it has been promised, there arises the duty of protection, and with it the power. This has always been recognized by the executive, and by congress, and by this court, whenever the question has arisen.

Justice Miller continues,

The power of the general government over these remnants of a race once powerful, now weak and diminished in numbers, is necessary to their protection, as well as to the safety of those among whom they dwell. It must exist in that government, because it never has existed anywhere else; because the theater of its exercise is within the geographical limits of the United States; because it has never been denied; and because it alone can enforce its laws on all the tribes.

Justice Miller effectively voiced the argument that since the creation of the United States all Indian Nations lost their sovereignty. Justice Miller furthered this argument by stating that indigenous governmental power never truly existed because the power “…must exist in [the federal] government, because it never has existed anywhere else”. Justice Miller’s ruling legitimized the Federal Government’s actions opening the legal door for future suppression of tribal sovereignty.

Though Kagama dealt with criminal jurisdiction the underlying tone of the decision showed the direction the federal government was moving in regarding Indian land rights. The following year, 1887 the Federal Government passed the General Allotment Act. Officially the General Allotment Act was intended to aid in the complete assimilation of all Indian Nations. Unofficially the General Allotment Act was nothing more than a land grab within Native American reservations. By its repeal in 1934 under the Indian Reorganization Act (IRA), the General Allotment Act as it had been supported by the

In 1953 Public Law 280 (PL280) was passed, igniting a new era of governmental oppression. PL280 entangled State criminal and civil jurisdiction with tribal criminal and civil jurisdiction to the point where crimes could be committed on reservation lands and no governmental bodies would have jurisdiction, effectively nullifying the crime (Goldberg-Ambrose 1997). That same year, House Concurrent Resolution 108 (HCR 108) was passed. HCR 108 has become known as the Termination Act though HCR 108 is not a law and each terminated nation was done so with separate acts. For the Federal Government this was the ultimate exercise in the use of its plenary powers and the final push by the Federal Government to “cause the Savage as the Wolf to retire…” HCR 108 led to the termination of the special relationship which existed between the Federal Government and 109 Indian Nations. HCR 108 and the accompanying termination acts resulted in “A minimum of 1,362,155 acres and 11,466 individuals [being] affected… The total amount of Indian trust land was diminished by about 3.2 percent” (Getches et al. 2011:88).

The first attack on Congress’ termination policy was brought by the Menominee. In 1968 Justice Douglas delivered the court’s opinion in *Menominee Tribe of Indians v. United States*. The Menominee argued that regardless of their termination, HCR 108 did not divest them of their treaty rights. Douglas concurred, arguing that because Congress made no specific reference to the abrogation of treaty rights in HCR 108, the Menominee retained all rights therein.

In the face of so much land loss and the outright termination of trust responsibilities, the need to preserve tribal lands took center stage. By 1969, the occupation of Alcatraz by Native American activists forced the conflict over tribal sovereignty and land rights into the public spotlight. The island was held until June of 1971. By 1972 tensions between the Federal Government and Native Americans reached a boiling point and in November of that year, roughly 500 individuals under the American Indian Movement (AIM) occupied the Bureau of Indian Affairs (BIA) building in Washington D.C. Among their list of grievances was the restoration of terminated rights. Then in 1973 AIM occupied the town of Wounded Knee on the Pine Ridge Reservation.
AIM held the town for 71 days as they were surrounded by the United States Marshals Service. Following these two events in December of 1973 Congress passed 25 U.S.C. § 903 The Menominee Restoration Act. The Menominee Restoration Act effectively repealed HCR 108; however, it only restored federal recognition to the Menominee. As of 2016 there are still terminated tribes who have not gained re-recognition and or have chosen not to become re-recognized.

Given this brief and select history of the relationship between Indian Nations and the Federal Government the following section outlines the history of federal preservation law and policy.

2.3 Preservation: The Colonial Framework

Prior to the 1870s, preservation efforts were largely performed by local groups and or individuals. One exception was Major John Wesley Powell’s push under the Bureau of Ethnography at the Smithsonian Institution, to preserve archeological Native American sites located on federal lands (Harrison 2013). Though the Smithsonian is not in and of itself an academic institution, for the purposes of this paper and the previous definition of academia to included academics who have found employment outside universities the Smithsonian falls into this category. Powell’s use of the Smithsonian laid the foundation for the development of the relationship between scholarly, or academic, research and the Federal Government.

In 1872, Congress passed an act setting aside some of the lands which would later become Yellowstone National Park. This act is seen as the first step taken by the Federal Government towards government controlled conservation/historic preservation. In 1906, the Federal Government finally responded to public and academic pressures regarding the preservation of American heritage through the passing of The Antiquities Act. The Antiquities Act created a federal permitting system for the excavation of archeological sites on federal lands and instituted some of the first criminal penalties associated with preservation. The Act also gave the U.S. President the ability to declare national monuments; after the Ninth Circuit Courts decision in Navajo Nation v. United States Forest Service 2009, this ability became one of the few options left to Indian Nations for
the protection of off-reservation lands. This case is explored further in chapter 2.3.1. The Antiquities Act of 1906 is one of the earliest documents which highlights the authority given to academia by the Federal Government in that it states:

…the examinations, excavations, and gatherings are undertaken for the benefit of reputable museums, universities, colleges, or other recognized scientific or educational institutions, with a view to increasing the knowledge of such objects, and that the gatherings shall be made for permanent preservation in public museums (16 USC 431-433).

Recognition for the need to preserve large tracts of land for the education of the public set the foundation for a western conceptualization of traditional cultural properties (TCPs). Over the next century the Federal Government took on greater responsibility and regulation of natural and cultural heritage resources. Even so, as is often the case when dealing with federal preservation law, the Antiquities Act of 1906 was not superseded by any major federal preservation legislation until The Historic Sites Act of 1935 (HSA). Though the HSA ultimately did little in the way of preservation, it opened the window for academia to obtain a foothold within the federal process. It was not until 1966 that the Federal Government was able to pass legislation which would have any more meaningful impact on preservation.

The National Historic Preservation Act (NHPA) of 1966 continued the development of the federal preservation framework and through the utilization of the latest preservation concepts began federal cultural resource management. During this same year the Department of Transportation Act was also passed establishing strict criteria for the preservation of historic sites. Then in 1979 in an attempt to strengthen the Antiquities Act the Archeological Resources Protection Act (ARPA) was passed. ARPA simply amended the Antiquities Act in that it provided for stronger fines, seizures, and prison sentences for violating the permitting system established under the Antiquities Act.
Nineteen ninety was a momentous year for preservation regarding Indian Nations. Both the Native American Graves Protection and Repatriation Act (NAGPRA) and the National Park Service (NPS) Bulletin 38 were finalized. NAGPRA was the Federal Government’s first attempt to not only provide specific protections for Native American burials, but it also began the long process of repatriating items collected over the years within federal and federally funded collections. Bulletin 38 will be discussed at length in Chapter 2.4, however it is important to note that the NHPA of 1966 was not made available to Native Americans until the 1992 amendments. The 1992 amendments added all of the current language in the NHPA regarding Indian Nations. The 1992 amendment also provided for tribes to create Tribal Historic Preservation Offices (THPO). Prior to 1992 any preservation undertaking would have gone through the State Historic Preservation Office (SHPO) and or any permitted parties. THPOs are intended to act as SHPOs regarding Native American cultural heritage both off and on reservations. Building on the above history, the following section will focus on the Supreme Court cases which guided the path for the role of TCPs in the protection of off-reservation lands.

2.3.1 The Traditional Cultural Property (TCP) Thread

To further understand the government’s interpretation and understanding of indigenous cultures and how that history plays a vital role in understanding why traditional cultural properties are becoming important tools for Native Americans, an important strand of federal Indian law must be followed. This strand begins with the birth of federal Indian law as constructed in the Marshall Trilogy. Since the first case in the trilogy, Johnson v. M’Intosh, U.S. federal Indian law has centered on land rights. Marshall recognized a special relationship existing between Indian Nations and the Federal Government. However, the relationship has been open to interpretation over the years and has been greatly influenced by academic perspectives (e.g., Pevar 2004). Prior to 1978 the Federal Government had not extended its trust responsibility to explicitly include Native American religious freedoms. In 1978 the American Indian Religious Freedoms Act (AIRFA) was passed. It was hoped that the Act would help protect Indigenous religious practices. In 1988 the Act was used in an attempt to preserve a tract of land which had religious
significance from development. The Supreme Court ruled in *Lyng v. Northwest Indian Cemetery Protective Association* that the development of this area would not affect the religious practices of Native people and effectively curtailed the use of AIRFA as well as any future attempt to use Native religious freedoms to protect land rights and claims. In 1990 with the opinion handed down by the Supreme Court in *Employment Division, Department of Human Resources v. Smith* the courts dealt another blow toward the explicit utilization of the trust responsibility to protecting Native religious freedoms. These cases are important because they reveal a great divide in how land is viewed by Indian Nations and the Federal Government. Even though Smith and AIRFA make no mention of land preservation they have a great effect on how tribes approach the Federal Government. Following the beliefs of most Indian Nations and their assertion of the sacred nature of land the most rational steps toward preservation would be through the protection of religious freedoms. This is how cases like Kagama and Smith as well as acts like AIRFA and the Religious Freedoms Restoration Act (RFRA) have had such a large impact on the preservation of off reservation lands. Time and again Indian Nations have attempted to use their spiritual connection to the land as a justification for preservation. After the Smith opinion in which the Supreme Court completely dismantled the free exercise of religion test, closing the door on any use of the protection of religious rights for the protection of lands, Congress stepped in and passed the Religious Freedoms Restoration Act (RFRA) of 1993.

As stated above and explored in greater detail in the next section, in 1990 Bulletin 38 introduced the designation of a TCP and the concept of intangible cultural resources. This left a door open to reclassify the sacred as culturally significant, circumventing the need to find an alternative to the devastation wrought by the Lyng and Smith decisions. It was hoped that RFRA would prop up what was left of AIRFA and repair some of the damage dealt by the Lyng decision. In 2007, the Navajo Nation attempted to use the RFRA to protect lands in much the same way that AIRFA was used in the Lyng decision. In 2009 *Navajo Nation v. United States Forest Service* received its final ruling by the Ninth Circuit, which found that the utilization of the land by the Forest Service did not affect the practice of the plaintiff’s religion and effectively shut the door once and for all on the use of native religion to protect land and land claims (Getches et al. 2011). The
The protection of off-reservation lands then completely entered the realm of the NHPA, Bulletin 38, and federal cultural preservation policies. Because of how the Federal Government has come to practice cultural preservation, this means that the final decision regarding the preservation of a historically significant place tends to fall on the involved governmental department heads. It is the purpose of the following section to examine not only the historical context of Bulletin 38, but the implications associated with it in the perpetuation of colonial structures as well as the potential it has for facilitating decolonization. The following will also help to answer the primary premise of this paper which is how academia, as it has been defined for this paper, has come to effect federal policies relevant to natural and cultural resource management and the protection of off-reservation lands using Traditional Cultural Property (TCP) designations.

2.4 The Rise of TCPs

Since the mid-1990s Indian Nations using claiming, reframing, naming, and protecting have constructed a space within the federal framework through which indigenous communities can slowly continue the alteration of the capitalist colonial infrastructure (Nicholas 2006). Between 1990 and 1992 several events took place which greatly transformed the federal preservation landscape. In 1990 Bulletin 38 was passed introducing the concept of traditional cultural properties. That same year the U.S. Supreme Court decision handed down through Employment Division, Department of Human Resources v. Smith not only sent a clear message to Indian Nations that the utilization of religious freedoms for the protection of off-reservation lands was unattainable, but that the court was willing to overturn all other precedents to drive this point home.

Following these two events, in 1992 the NHPA of 1966 underwent a substantial overhaul. As introduced above, the amendments provided for the integration of indigenous needs for the protection of off-reservation lands. The importance of Bulletin 38 can be seen in its inclusion in the amendments to the NHPA. Section 101 (d)(6)(A) states “Properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization may be determined to be eligible for inclusion on the National Register.”

This language reflects the concepts of intangible culture which Bulletin 38 attempted to
introduce to the growing federal CRM community. Parker and King had written in the 1990 bulletin,

The National Register lists, and 106 requires review of effects on, tangible cultural resources—that is, historic properties. However, the attributes that give such properties significance, such as their association with historical events, often are intangible in nature. Such attributes cannot be ignored in evaluating and managing historic properties; properties and their intangible attributes of significance must be considered together.

Bulletin 38 was written by Patricia Parker and Thomas King who were and are both practicing anthropologists. The Bulletin was written with the hopes that it would help those practicing CRM to better identify intangible culture as it applied to Section 106 of the NHPA. This was intended to underscore that TCPs are manifestations of not only cultural ties to landscape, but place as well. King has stated that Bulletin 38 was not intended to apply simply to Native American communities, however, “… Bulletin 38 was written by a cultural anthropologist and an archaeologist. It probably simply speaks to indigenous communities and their friends more readily than it does to people whose main concern is the built environment” (King 2003:256).

What is important about this statement is that it highlights how influential academia can be regarding federal policy. However as is pointed out in Campbell and Foor’s (2004) research, the largest problem with establishing sacred places through the Federal Government -- and in this case through the NHPA’s Section 106 -- is that they are inherently going to be open to the public. It can also be argued that this increase in governmental control comes with a price, as “states seek to simplify aspects of social, economic and political life so that they can be assessed in aggregate and controlled more effectively” (Scott in Harrison 2013:47). Unfortunately, the bureaucratic process has become greatly institutionalized by using academia as a form of self-legitimization; resources are then imbued by the state with national values and become reborn as public
heritage. King recognized this dilemma, noting, “[Lynne Sebastian] also emphasizes, correctly I think, the ‘painful process of identification’ that the bulletin imposes on efforts to protect TCPs” (King 2003:283).

Because Bulletin 38 renamed sacred lands within the federal framework as intangible heritage, there is less need to call on AIRFA to help protect off-reservation lands that retain cultural importance. Even though Bulletin 38 contains several inherent flaws, such as its perpetuation of TCPs falling under the public domain of Section 106, it is important to note that the language within the bulletin does support the concepts of claiming, protecting, and naming. It is the intention of Bulletin 38 to perpetuate the concept of protecting as it is laid out in the NHPA. Unfortunately from the perspective of decolonization, Bulletin 38 still perpetuates western conceptualizations of culture because it was written completely within the western anthropological perspective. More often than not, claiming and protecting are carried out in ways that appear to be paternalistic, and naming by default is in English or does not recognize multi tribal claims to a region (National Park Service 1990). Building on the history and impacts of Bulletin 38 and the NHPA, the following chapter examines three case studies and analyzes them within the framework of decolonization.

Bulletin 38 is a direct result of academics working within the Federal Government utilizing the knowledge gained through academia to alter federal police. Their impact clearly affects subsequent laws such as the NHPA and results in a new approach for Indian Nations to attempt when protecting lands. Given the place of privilege academia has been placed in within the federal government the separation of Indigenous cultural/religious land rights can once again be bridged. In effect Academia has acted as a translator between Indian Nations and the Federal Government regarding Indigenous cultural conceptualizations.

1 Johnson v M’Intosh, Cherokee Nation v Georgia, and Worchester v Georgia.
2 The concept of intangible culture would eventually enter the federal framework with the creation of Bulletin 38 in 1990. See chapter 2.4
3 Under the 2014 amendments and re-designation this section is now 54 U.S.C. § 302706. (a)
Figure 2.1 Select Historical Events

1775 Start of the American Revolutionary War
1778 Treaty of Fort Pitt
1781 Articles of Confederation; Article IV, IX
1783 “…the Savage as the Wolf to retire…”
1783 End of the American Revolutionary War
1785 Beginning of the Northwest Indian Wars
1788 U.S. Constitution Article 1 sec. 8
1795 End of the Northwest Indian War
1804-1806 Corps of Discovery Expedition
1810 Beginning of Tecumseh’s War ending at the end of the War of 1812
1812-1815 War of 1812
1823 Johnson v. M’Intosh
1830 Indian Removal Act
1831 Beginning of the removal of the Cherokee, Choctaws, Chickasaws, Creeks, and Seminoles
1831 Cherokee Nation v. Georgia
1832 Worcester v. Georgia
1838 Last of the Cherokee, Choctaws, Chickasaws, Creeks, and Seminoles removal
1861 Start of the American Civil War
1862 Largest mass Execution in U.S. History, 38 Santee Sioux executed at Mankato
1865 End of the American Civil War
1871 End of Treaty Making resulting in over 370 ratified treaties
1879 Establishment of Carlisle Indian Industrial School
1883 Ex parte Crow Dog
1885 Major Crimes Act
1886 United States v. Kagama
1887 General Allotment Act (Dawes Act)
1898 Curtis Act
1890 Superintendent of the Census Bureau declares the frontier closed
1890 Wounded Knee Massacre
1891 Leases of Lands for Grazing or Mining 25 U.S.C. § 397
1903 Lone Wolf v. Hitchcock
1906 Burke Act
1906 Antiquities Act
1913 United States v. Sandoval
1923 Posey War, Last of the Indian Wars
1934 Indian Reorganization Act
1935 Historic Sites Act
1938 Indian Mineral Leasing Act 1948
18 U.S.C. § 1151 Indian Country
1953 Public Law 280
1953 Termination begins
1966 National Historic Preservation Act
1966 Department of Transportation Act
1966 Last Tribal Termination (109 Tribes terminated)
1968 Menominee Tribe of Indians v. United States
1969 Occupation of Alcatraz begins
1971 Occupation of Alcatraz ends
1971 Alaska Natives Claims Settlement Act
1972 BIA takeover
1972 Pyramid Lake Paiute Tribe of Indians v. Morton
1973 Second Wounded Knee
1974 United States v. Washington
1976 Beginning of the Crandon Mine Struggle
1978 American Indian Religious Freedoms Act
1978 Indian Child Welfare Act
1978 25 CFR Part 83 recognition procedures
1979 Archeological Resources Protection Act
1981 Montana v. United States
1982 Merrion v. Jicarilla Apache Tribe
1985 BLM and USFS grant drilling permits in the Badger-Two Medicine
1988 Lyng v. Northwest Indian Cemetery Protective Ass’n
1990 Oka Crisis at Kanesatake
1990 Employment Division, Department of Human Resources v. Smith
1990 Native American Graves Protection and Repatriation Act
1990 Bulletin 38
1992 NHPA amended to included Tribal Nations
1993 Religious Freedoms Restoration Act
2003 Buyout of the Crandon Mine
2006 DODI 4710.02
2009 Navajo Nation v. United States Forest Service
2014 Badger-Two Medicine Traditional Cultural District created
2014 AFI 90-2002
2015 DOI officially rescinded the Badger-Two Medicine drilling permits
Chapter Three:

Crandon Mine, Badger-Two Medicine, and AFI 90-2002 Case Studies

U.S Air Force planning actions that may affect tribes include, but are not limited to (a) land-disturbing activities, (b) construction, (c) training, (d) over-flights, (e) management and protection of properties of traditional religious and cultural importance including historic properties and sacred sites, (f) activities involving access to sacred sites, (g) disposition of cultural/funerary items in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), (h) natural resources management activities, (i) educational and public affairs activities linked to tribal topics, and (j) other land use/military airspace operations in general

(AF1 90-2002, Section 1.5.1).

3.1 Case Study 1: Crandon Mine

The purpose of the Crandon Mine case study is to highlight the complicated process through which off-reservation lands can be protected. The primary distinction between this case study and the second, Badger-Two Medicine case is the difference in land status. The Badger-Two Medicine is located completely within federal jurisdiction, whereas the proposed Crandon Mine site is on state lands. For this reason, the potential utilization of a TCP designation was not available until the mid-1990s—and so could not explored until 2000, over two decades after the Crandon Mine events began.

In 1976, Exxon announced the discovery of a large copper and zinc deposit adjacent to the Sokaogon Ojibwe Reservation of the Mole Lake Ojibwe. This discovery began a twenty-seven yearlong battle between the tribes in the area and several multinational corporations, as well as the state of Wisconsin. The Mole Lake Ojibwe used several governmental agencies and associated Acts, as well as the implied treaty rights which the Mole Lake Ojibwe claimed. The Mole Lake Ojibwe argued that the lands proposed for the Crandon Mine were promised to them during the signing of the treaty of 1854; however these lands were not enumerated in the treaty.
Between 1976 and 1988, the rights for the proposed mine changed corporate hands and in 1988 the state zoning laws which were prohibiting the construction of the mine were effectively bypassed. Simultaneously in 1986 the Mole Lake Ojibwe sued Exxon, arguing that the proposed mine was to be built on those lands alleged to have been promised to the Mole Lake Ojibwe in the 1854 treaty. The case was tied up in the court system until 1992 when the United States District Court ruled against the land claim. The case remained in the legal system until 1994 when the petition for certiorari was denied by the U.S. Supreme Court.

The Mole Lake Ojibwe then used the Clean Water Act (CWA) as it had been amended in 1995 allowing the Environmental Protection Agency (EPA) to treat Indian Nations as states. The Mole Lake Ojibwe argued they reserved the right to set water standards for all waters flowing onto their reservation. The EPA granted the Mole Lake Ojibwe state status with regards to the management of the watershed on the reservation. Under the CWA, the Tribe was now able to raise the water purity standards for the affected watershed with the backing of the Environmental Protection Agency.

The state of Wisconsin promptly sued the environmental protection agency arguing that it had breached the U.S. constitution with the formation of a “state-like entity within its borders” (Nesper 2011:155). The Seventh Circuit Court of Appeals in 2001 ruled in favor of the EPA and the Mole Lake Ojibwe on the grounds that the Federal Government has created a special relationship with the Indian Nations as established through Cherokee Nation v Georgia. During this time, the mine was bought out in 1998 and the new company attempted to comply with the more stringent water standards emplaced by the Ojibwe. In 2000, ahead of the state of Wisconsin’s approval of the new company’s compliance with the water standard, the tribe, headed by the THPO established a coalition of engineers and academics with the sole purpose of beginning to construct the argument for the establishment of a TCP designation for the proposed lands. Once the coalition was set free to gather their information it became clear that a strong case could be easily constructed for the inclusion of the land owned by the mine:

The first step taken in the study was to change the English names of the lakes and streams back to Ojibwe. This exercise revealed dramatically different cultural relationships.
with the landscape. For instance, the Sokaogon called the small, wetland-enveloped creek flowing into Rice Lake from which they still gather herbs and medicinal plants “Mushgigamongsebe” which means “Little River of Medicines.” White settlers called it “Swamp Creek” (Reynolds 2007:20).

The study culminated in the creation of a “100-page report titled The Mushgigamongsebe District: A Traditional Cultural Landscape of the Sokaogon Ojibwe Community” (Nesper 2011:160). This report was then submitted to the Wisconsin SHPO and the U.S. Army Corps of Engineers (USACE) for review and to begin the registration process. However, before this process could be fulfilled, the tribe was able to work a deal with the new mine owners, and in 2003 the Mole Lake Ojibwe were able to buy the mine and all of the mineral rights therein (Nesper 2011; Reynolds 2007).

3.1.1 Case Study 1: Utilizing Linda Smith’s (1999) Categories

To understand why the Crandon Mine case is important to understanding decolonizing methodologies, as well as the interconnected relationship between academia, Indian Nations, and the Federal Government, one must recognize the roles each of those institutions played as events unfolded. The following analysis will focus on Linda Smith’s concepts of claiming, reframing, naming, and protecting.

As a form of claiming, the very act of becoming involved in opposing the Crandon mine’s construction sets in motion the act of decolonization. Due to the complexities of the treaty process, the Mole Lake Ojibwe never signed a treaty with the Federal Government. However, the tribe maintains that they were promised the lands around Rice Lake. Under the Indian Reorganization Act of 1934 (IRA), the tribe gained federal recognition and was given a reservation on Rice Lake. This is important because the State of Wisconsin, in its attempt to perpetuate the colonial hegemony legitimated in the 1950’s by the Federal Government’s passing of Public Law 280, sued the EPA and the tribes as stated above (Goldberg-Ambrose 1997). If it had not been for the fact that the tribe had claimed the land in the 1930’s and placed themselves within the “domestic, dependent
nation” relationship, the case would have been closed long ago (Wilkinson 2004). Understanding how indigenous communities have claimed their past and their identity is important for applied anthropologists to recognize and integrate into their studies, because more often than not those anthropologists who do not approach community studies with the same cultural deference as Reynolds simply perpetuate the current bureaucratic process and self-legitimization of federal preservation practices. In other words, studies which are written with western perspectives and western historical conceptualizations do more damage to indigenous communities and their federal identities than those which draw on the community’s already extant self-conceptualization. The act of claiming is then strengthened by the practice of protecting, which in its most literal application in the case of the Crandon Mine, is the claiming of the terrain consisting of Rice Lake and the landscape associated with it. A distinction between the terrain and the landscape is important for the following subsections of naming and reframing.

If the Mole Lake Ojibwe did not have a sense of protecting, there would have been no actionable opposition to the Crandon Mine’s construction. The importance of protecting to the Ojibwe is exemplified in the 27-year-long struggle and the exhaustion of all of the federal programs at their disposal. Ultimately, in this instance of protecting, the tribe was able to oppose the entrenched capitalistic colonialism embodied by the corporate owners of the mine and the state of Wisconsin. It was through the addition of supportive legal precedents and federal environmental cases—as well as to the Indian Gaming Regulatory Act of 1988 (IGRA) allowing tribes to build and run casinos—that the tribes were able to purchase the mine outright. In and of itself the very act of purchasing the mine set a greater and more positive example of decolonization than any of the legal precedents set during the struggle. In bypassing the need for the Federal Government to assume its self-appointed role as guardian for the tribes, the Ojibwe were able to negotiate as a sovereign nation with a multinational corporation and secure a beneficial outcome for the tribe. This is a positive example which any applied anthropologists should welcome in much the same way that Reynolds (2007) recognizes that though the work of his team was not used, the outcome strengthens tribal sovereignty.

With respect to how the Mole Lake Ojibwe framed their arguments and their general approach toward the mine owners, the Federal Government, and the state of Wisconsin, little can be argued against their approach given the resources available to
them. The Mole Lake Ojibwe were the ones who filed to protect Rice Lake under the Clean Water Act. Because the tribe framed the protection of Rice Lake through established federal preservation frameworks, the Federal Government ultimately had little choice but to comply. It was also because of the tribe’s utilization of IGRA that they were able to fund all of their projects. The tribe maintained control of all the lawsuits levied on their behalf, and or by them, as well, the Mole Lake Ojibwe were the ones who called for the utilization of Section 106 and the construction of a NHPA district utilizing Bulletin 38. Ultimately it was the tribe who decided to shelve The Mushgigagamongsebe District Report and pursue a buyout of the mine. Through the act of reframing and framing the Mole Lake Ojibwe were able to use the existing capitalistic colonial infrastructure to their advantage. In preforming this act the tribe was able to set several legal precedents which allow future generations to continue the process of decolonization. It is important to note that this is a unique case where all of the outcomes and those involved supported the goals set by the Mole Lake Ojibwe.

3.2 Case Study 2: Badger-Two Medicine

The events surrounding the creation of the Badger-Two Medicine exemplifies how TCPs can be utilized to protect off-reservation lands. The Federal Government and the Blackfeet Nation officially entered into a treaty in 1856 with the ratification of the 1855 Treaty with the Blackfoot Indians. Subsequently in 1866 and 1868 the Blackfeet agreed to two separate treaties which were never ratified by Congress. These two un-ratified treaties would have relinquished large tracts of land to the south and the east of the present day Blackfeet Reservation. Even though these treaties were never ratified, white settlers used the chance to move into and occupy Blackfeet land. In 1875 President U.S. Grant signed an Executive Order which solidified the boundaries agreed to in the un-ratified 1866 and 68 treaties. On May 1, 1888 Congress passed 25 Stat. 113 which established the present day Northern, Eastern, and Southern boundaries of the Blackfeet reservation. In 1895 the Blackfeet Nation entered into an agreement with the Federal Government which conditionally ceded a strip of land on the western edge of the Blackfeet reservation which was subsequently ratified in 1896 by Congress. In 1910 the Federal Government established Glacier National Park under 16 U.S.C. §161, and the boundaries included all of
the ceded lands agreed to under the 1895 agreement. The overlap of the 1895 ceded strip and the creation of Glacier National Park set the stage for a confrontation between the Federal Government and the Blackfeet Nation.

“In 1973, the Blackfeet Tribal Council passed a Tribal Resolution declaring the entire Badger-Two Medicine area ‘sacred grounds’”(Yetter 1992). In 1985 the Bureau of Land Management (BLM) and the National Forest Service (NFS) approved a drilling permit within the overlapping territories of Glacier National Park and the 1895 ceded strip. The drilling permit was immediately placed on hold pending a review and analysis under NEPA and NHPA. In 1989, a draft environmental Impact Statement (EIS) was presented which was finalized in 1990. It was during this EIS that the Federal Government was made aware of the potential for a Badger-Two Medicine Traditional Cultural District (TCD). In 1991 the FS and BLM issued a joint Record of Decision (ROD) which concluded the NEPA process and permitted drilling. In 1993 the BLM reissued its ROD and stated that “no traditional cultural properties were found in the project area”(ACHP 2015). The then Montana SHPO did not agree with the 91 and 93 RODs. That same year the Application for Permit to Drill (APD) was suspended given legislation which was introduced to protect the Badger-Two Medicine area. In 1996 the FS reinitiated section 106 consultation and in 1997 the FS and BLM did not authorize any new lands for oil and gas leasing on the Lewis and Clark National Forest in the Rocky Mountain Division of the BLM. This was an area of 356,000 acres which included the area which would become the Badger-Two Medicine TCD.

As part of its effort to better evaluate the potential effects of the undertaking on the TCD, the FS, in consultation with the Blackfeet Tribe, undertook extensive ethnographic studies of the area to better define the nature of the TCD and its significance to the Blackfeet Tribe. The findings from these investigations resulted in the TCD being determined eligible for the NRHP by the FS and the Keeper of the NRHP (Keeper) in 2002… (ACHP 2015).
In 2006, the Tax Relief and Health Care Act was passed by Congress. In it “Congress withdrew lands from oil and gas leasing on the Rocky Mountain Division of the BLM, making new leases in the TCD impossible” (ACHP 2015). Through its ongoing section 106 consultation, “In 2014, the Keeper considered additional documentation provided by the FS and expanded the boundary of the TCD, such that it included all of the Solenex leasehold and also included tribal lands outside of the National Forest” (ACHP 2015). In October of 2015 the United States Department of Agriculture (USDA) concurred with the FS and the ACHP and recommended the cancellation of the Application for Permit to Drill. In November of 2015 the Department of the Interior (DOI) officially cancelled the APD ending the now three decade’s long conflict over the Badger-Two Medicine Traditional Cultural District.

3.2.1 Investigating the Badger-Two Medicine

The Badger-Two Medicine is a unique instance where the Section 106 process can be followed from start to finish. The process has spanned 30 years, during which time the affects from the creation of Bulletin 38 and the 1992 amendments to the NHPA can be viewed and applied in full. From the very beginning the Blackfeet claimed, named, and pushed for protection of the Badger-Two Medicine as is shown above with their 1973 Tribal Resolution. The majority of their battle has been in framing the Badger-Two Medicine in a way which the Federal Government becomes obligated to protect the land.

Because the Badger-Two Medicine is located on federal lands, immediately after the Application for Permit to Drill was issued a NEPA study was undertaken. As part of this study, Section 106 of the NHPA must be applied. It was at the completion of this first EIS that Bulletin 38 and the 1992 amendment to the NHPA come into effect. These two regulations supporting Indigenous perspectives exemplify the kind of influence academia has within the Federal Government. The Blackfeet with the support of the Montana SHPO were able to create a new case for protection given this newly introduced framework. As the mediator, academia has been able to use indigenous conceptualizations to guide how the Federal Government views land conservation.

As argued above, the Federal Government conceptually separated Indian Nations from the land through legislation. It has been because of this governmental framework that
Indian Nations have not been able to protect land under religious arguments. The Federal Government does not treat land as imbued with religious meaning and because of the separation of church and state as represented in the establishment clause of the first amendment the Federal Government will never explicitly grant Indian Nations greater religious freedoms than any other group. What is important about studying the Badger-Two Medicine is recognizing the role academia played in introducing new structures within the Federal Government, which in effect translates the concepts of sacred lands into intangible heritage. By renaming the sacred the Federal Government is able to interact with lands within its present preservation framework.

Given the speed at which the Federal Government moves, it was not until 1996 that the FS and BLM entered into consultation with the Blackfeet and other interested Indian Nations given the new framework. The consultation was intended to define the boundaries of a TCP which would encompass as much of the contested off reservation lands Blackfeet as possible. By 2014 the effects of this new academic interpretation of indigenous conceptualizations helped to facilitate the passing of several executive orders which aided in the process of consultation with Indian Nations. Given this restructuring of the extant governmental preservation framework and buffeted by the work of THPOs, the Keeper of the NRHP expanded the Badger-Two Medicine traditional cultural district to include all lands enumerated within the Application for Permit to Drill. These steps lead to the declaration from the secretaries of the Interior and Agriculture to prohibit drilling.

For all the praise and the positive outcome of the Badger-Two Medicine, there is an underlying flaw. The 2015 decision not to drill was made by the Secretary of Agriculture and the Secretary of the Interior; the final say in a 30-year-long struggle came down to two people. Ultimately the decision hinged on the Secretary of the Interior. If the secretary had decided to allow drilling, the only recourse left to the associated Indian Nations would be to seek a Congressional and or Presidential act prohibiting drilling. Because the Federal Government does not seek to protect land as a sacred entity, it will always be viewed as a potential resource. Which given any number of material needs and or pressures there is always a potential for the exploitation of said resource. The recognition of this flaw reveals how important the continued struggle for the decolonization of the Federal Government is for Indian Nations.
3.3 Case Study 3: Air Force Instruction (AFI) 90-2002

As presented above, over the past 25 years there have been positive strides toward improved relations between the United States Federal Government and federally recognized tribes. In 2006, the Department of Defense drafted DODI 4710.02 with the goal of implementing a: “…DoD policy, [that] assigns responsibilities, and provides procedures for DoD interactions with federally recognized tribes…” Nearly a decade later, in 2014 the USAF created Air Force Instruction (AFI) 90-2002, which began the process of complying with DODI 4710.02. Among the outcomes of AFI 90-2002, the University of Montana (UM), through a cooperative agreement with the U.S. Army Corps of Engineers (USACE), was tasked with the creation and development of a training manual and training content for United States Air Force (USAF) base commanders throughout the lower 48 and Alaska and other associated personnel, namely Installation Tribal Liaison Officers (ITLOs). This training package is intended to give USAF leaders the tools to carry out AFI 90-2002 in order to facilitate and maintain sustainable, meaningful relationships with Indian Nations.

In order to understand the training needs of the audience, I created a survey [using Qualtrics] to be sent to USAF civilian and enlisted staff serving as ITLOs, Cultural and Natural Resource Managers (CRMs and NRMs), and others with assignments relevant to tribal relations and consultation.

The survey was comprised of 10 questions which focused on providing the team at the University of Montana with an overview of current Air Force perspectives and understandings of the Government-to-Government relationships between Indian Nations, the Federal Government, and the States (see Appendix A). To this end the first questions asked the respondents to rate on a scale of 1 to 10 the level of ongoing relations between their base and Indian Nations. The second question asked from 1 to 10 (low importance to high importance) how they perceived how specific base personnel viewed Tribal relations.

Following those two questions, respondents were asked for a description of tribal sovereignty and whether they believe government-to-government relations are necessary. In an attempt to understand how Air Force personnel view their relationship with Indian Nations, we asked the respondents to rate from 1 to 10 how they believed Tribal individuals perceive relations with the respondent’s base. Following this, in an attempt to
gauge the current bureaucratic structures in place within the respondent’s bases, we asked respondents to indicate who they would seek out in order to understand current base and tribal relations. The final two questions focused on the respondent’s perception of government-to-government relations by asking if they believed their base had an impact on Indian Nations. Finally, attempting to see how this project would be received by Air Force personnel we asked if they believed if training to improve relations with tribal nations is necessary.

In addition to this survey of Air Force personnel, a second survey will be sent to Tribal Leaders across the country which will become available with the completion of another master’s thesis (Lopez forthcoming). Once the survey was designed we submitted an application with the University of Montana’s Institutional Review Board (IRB) for approval. The process was straightforward because all the individuals being surveyed and interviewed were doing so within the capacity of their official positions. The IRB committee felt that there was low risk for subject abuse. See details in Appendix B IRB Application.

Following IRB approval, the USAF POC, or point of contact, reviewed and sent the surveys to a selection of USAF respondents (n=53), including the authors of AFI 90-2002; CRM; NRMs; USAF Tribal Relations Committee Members; AFCEC staff; ITLOs; and other USAF officers, many of whom served as the peer reviewers for the UM training package, representing the new federal framework of preservation as discussed above in 3.3 and at the early implementation of AFI 90-2002.

Having now introduced the Air Force case study it is important to explain how this project supports this thesis. The main hypothesis of this paper being: how has academia affected federal policies relevant to natural and cultural resource management and the protection of off-reservation lands using Traditional Cultural Property designations? Given the inclusive definition for academia above, the Air Force case study is included to provide insight to how a project is undertaken within the walls of academia. Though this project does not directly create policy regarding TCPs it does have the potential to affect many TCP claims and their outcomes. Because the land associated with Air Force bases is federal land and given the large size of most, few bases fail to encompass lands previously inhabited by Indigenous peoples. For this reason most of the interactions between Air Force bases and Indian Nations revolve around access to the land and resources within
The training project undertaken by the University of Montana focuses heavily on training incoming ITLOs on the importance of the claims of Indian Nations to lands and resources on base. The need to focus on land and natural resource issues was also made apparent in the responses to our survey question regarding who to contact when requesting information on current relations with Indian Nations (survey question #5). Many of the responses from Air Force personnel indicated that their first contact would be their on-base CRM/NRM. Given the outcome of the Badger-Two Medicine Traditional Cultural District, and remembering that it was on off-reservation federal land, the potential for TCP designations within Air Force bases is high. With this in mind, applying concepts utilizing decolonization the potential for academia to influence future polices and TCP designations is also high.

3.3.1 Preliminary USAF Survey Methods and Results

Raw results of the survey can be found in Appendix A. Here I summarize and present the survey data. When asked to rate on a scale from 1 to 10 how they perceived the relationship between their base and Indian Nations, both local and non-local, the results indicated that most participants felt that these relationships are extremely poor (Figure 3.1). Interestingly, when asked to rate from 1 to 10 the importance of having a cooperative relationship with Indian Nations represented in Figure 3.2, participants clearly recognized the need when dealing with local Nations (mean= 7.82). However, when asked the same question only about non-local Indian Nations, the responses showed a drastic drop in the perceived importance for establishing relations. These differences suggest a trend within the Federal Government to interact with Indian Nations given their current geographic location and not their traditional homelands.
Question 1: Do you feel your base/installation has a cooperative working relationship with any tribes (local or non-local) or stakeholders groups? The x-axis represents the three groups in question and the y-axis presents the percentage of responses given the 1 to 10 rating scale for each group.
Figure 3.2

Question 4: How important do you feel it is to have a cooperative relationship with tribal governments or stakeholders? Here the x-axis represents the groups in question and the y-axis represents the percent of responses given the 1 to 10 rating scale for each group.

In Figure 3.3, the participants rate themselves as being perceived fairly neutrally by tribes. Given much of the pushback by Indian Nations regarding the lack of participation from Air Force bases the response to this question resulted in the development of a section of the training manual dedicated to the successes and sort comings of past Air Force and
Indian Nation interactions. The results of the surveys sent to Indian Nations helped to expand what aspects of the relationship needed to be explored. These results can be found in (Lopez Forthcoming).

Figure 3.3

Question 2: In your opinion, how are tribal and base relations perceived by the following tribal individual. The x-axis presents the individuals listed in the survey and the y-axis is the average of the 52 respondents based on a 1 to 10 scale.
Figure 3.4 represents the participant’s ranking of the level of jurisdictional authority between the Federal Government, Indian Nations, and States. Of the 52 participants, 16 (30.8%) viewed tribal jurisdiction as equal to that of the Federal Government. The mean values from the rankings indicate that the participants see the overall relationship as being Federal first, then Indian Nations second, and States third. However, observing the variance of ranking assigned to the Tribal category, it is clear that the participants perceive tribal jurisdiction in many different ways, though states consistently occupy the lowest judicial ranking. To address the current legal standing of Indian Nations, the training content for the Tribal Relations project used this survey information to develop modules on sovereignty, government-to-government relationships, the diversity of tribal governments, and the complexities of federal, state, and tribal jurisdiction.

Figure 3.4

Question 7: Rank these three jurisdictions in order of authority (1=highest level of authority). The x-axis contains each of the three jurisdictional entities we included and the y-axis is the percent of responses given the total number of respondents. Respondents were allowed to provide a rating of 1, 2, or 3 to each of the entities independently.
3.3.2 Discussion

The results of the survey indicate that decolonization is largely missing from the Air Force’s current approach. Though the argument can be made that a strong amount of empathy exists toward Indigenous struggles within the Air Force, the desire to work through and implement Indigenous perspectives is greatly lacking. A large portion of this reluctance may be due to the current military bureaucratic structure. The U.S. Air Force is not an institution which has been designed to interact with Indian Nations, given the extremely complicated and convoluted nature of the United States’ relationship with them.

With the information taken from the survey, the training package took on a clear direction and depth. Given the importance of conveying and instilling decolonizing approaches, the project team developed the manual and accompanying training package to incorporate a strong foundation of American Indian history and federal legal precedents. In effect, by providing a strong historical foundation, the manual would be framing and reframing how the trainees understand and interact with Indian Nations. This would begin the process of decolonization as it has been introduced in this paper.

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1 Even though the 1995 amendment to the CWA recognizes Indian Nations as states, this still negates the special relationship which exists between the Federal Government and Indian Nations. It has been established by the Federal Government that Indian Nations existing as domestic dependent nations maintain greater sovereignty than states.

2 As argued in chapter 1.1 such reports are directly representative of academia’s influence given the academic background of those writing the report.

3 The original Scope of Work (SOW) required UM to create a consultation meeting plan for USAF bases and federally recognized tribes located within the U.S. Southwest. The original SOW also required UM, as a contractor, to initiate and host the first of required biannual meetings laid out in Air Force Instruction (AFI) 90-2002. Several months into the project the USAF altered the SOW to the training package described here.
Chapter Four:

Conclusions and Recommendations for Future Research

“Solutions to colonialism must be developed cooperatively and with respect for the principle of self-determination: to consent to a lesser standard that gives primacy to colonial law, or accepts political or economic constraints, is simply to capitulate to the skewed logic of colonialism” (Taiaiake Alfred 1999).

4.1. Conclusions and Discussion

After reviewing the case studies above, other federal court cases dealing with indigenous land rights, and the history of the federal preservation frameworks leading up to protecting off-reservation lands using TCPs, it is clear that the power behind Bulletin 38 is based on the knowledge gained by integrating the academic process, education, and federal policies, all of which are based on knowledge from Indigenous people. The Federal Government, represented by the federal court system, turned to academia to provide the ultimate authoritative say on various issues. Then the judiciary crafted opinions based on that academic interpretation, establishing a precedent which in turn codifies and perpetuates federal policy.

Because of this hand-in-hand relationship between the Federal Government and academia, understanding how academia interprets indigenous perspectives is crucial to understand federal law. One of the many hurdles the relationship between academia and the Federal Government creates through the codification of academic perspectives is a temporal disconnect between past academic understandings and present perspectives. When a law or federal precedent becomes codified, it incorporates the academic understandings of that time. This is problematic when fifty years later those same laws are clashing with current academic interpretations. Unfortunately, this is the judicial reality within federal Indian law; it is rare that federal Indian law precedents are ever completely overturned. Because of the overlapping temporal perspectives extant today constituting federal Indian policies, the concepts and realities of colonialism as they existed in the past have been modified and carried through to today. An example of this can be seen in the coexistence of the Marshall Trilogy and Justice Miller’s Kagama opinion. The judicial precedents set by the Marshall Trilogy was not overturned by Justices Miller’s delivery of the court’s opinion in United States v. Kagama. This is a unique situation to Federal Indian law but is present in almost every federal Indian court case. This coexistence is
equivalent to *Plessy v. Ferguson* simultaneously existing with *Brown v. Board of Education* (Getches et al. 2011).

While academia, the Federal Government, and Indian Nations have a long associated history with one another, land remains a major point of contention between Indian Nations and the Federal Government. Each of the case studies featured here were grounded in the need to protect and use land. Exploring these three case studies within the context of decolonizing methodologies reveals the complexities that exist in the relationship between Indian Nations and the Federal Government.

Academia, having no stake in the contestation of land, has over the years come to occupy a position that is supportive of both Indian and Federal sides of various issues. This thesis has attempted to demonstrate where and how these interactive relationships have evolved and put forward the argument that the only way forward is through the incorporation of decolonizing methodologies into this complex relationship. The best example of cultural resource management within the federal framework regarding the success of decolonization can be understood through the introduction of traditional cultural properties. Bulletin 38 and the 1992 amendments to the National Historic Preservation Act opened a door into the federal preservation framework through which Indian Nations and academia can begin to alter federal structures. By no means are TCP designations the final answer to the protection of off-reservation land. In fact, as the Crandon Mine case study indicated, buying land may be the best way to protect off-reservation resources.

Nissley and King (2014) and Campbell and Foor (2004) all view current federal policy as being a poor fit for preserving and conceptualizing indigenous landscapes. Stanfill makes the argument that “this legislative trend in the United States is not a revolutionary alteration of how we do business under the federal preservation program, but an evolutionary one” (Stanfill 1999:65). However, given the current judicial and legislative body of laws, few other options are available to Indian Nations at the federal level.

### 4.2 Recommendations for Future Work

In looking to the future, it is clear that legislation needs to be introduced that either strengthens the current protections under TCP designations or creates a process through which off-reservation lands can be more easily placed into trust with Indian Nations. One
possible check which could be introduced to the National Historic Preservation Act would be tribal oversight of traditional cultural properties. In effect, once a TCP is created the authority, to allow any development within the traditional cultural property therefore would rest with those tribes having a vested interest in the location. This would also help to perpetuate the co-management of these spaces. In supporting co-management, there exists an increased chance for the introduction of indigenous conceptualizations into the federal framework.

Until legislative action is taken there are few preemptive options for Indian Nations in the protection of off-reservation lands. Unfortunately, because there is no mechanism within the Federal Government for discreetly interacting with the sacred, the process through which federal protections is granted is often traumatic for those Indian Nations involved. This is the dilemma Rodney Harrison presents when he points out that once cultural heritage is introduced to the federal system it becomes reorganized to fit within the federal framework (Harrison 2013). In this way, locations of sacred significance which often are intended to be kept private are now made public through the federal interaction. Given that this thesis focuses largely on the federal perspective, the next question to answer is how a TCP designation affects Indian Nations, and given their potentially culturally destructive nature, whether TCPs are truly beneficial to Indian Nations? In order to answer this question, extensive ethnographic field work would be required.

The continued push to decolonize the federal preservation framework will aid in strengthening federal recognition of tribal political and cultural sovereignty. For example, the struggle over the creation and preservation of the Badger-Two Medicine traditional cultural district is supportive of this claim. Also, as was indicated in the results of the USAF survey, there is a willingness within the Federal Government to increase its understanding of federal and tribal relationships. It is at this juncture where academia, working with Federal Government agencies, can have the greatest influence in moving progressive indigenous issues forward. It is time that as a nation, the United States recognizes its true identity: a nation state intertwined with 566 other nations existing on a landscape pulled in an infinite number of directions.
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Smith, Laurajane  

Smith, Linda Tuhiwai  

Snortland, J. Signe  

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Tatum, Melissa L. and Jill Kappus Shaw  

Trudell, John  

U.S. Department of the Interior  
Wilkinson, Charles and The American Indian Resource Institute  

Yetter, Bob  
Appendices

Appendix A: Raw data from the survey sent to the USAF

1. Do you feel your base/installation has a cooperative working relationship with any tribes (local or non-local) or stakeholder groups?
2. In your opinion, how are tribal and base relations perceived by the following base personnel:

<table>
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<tr>
<th>#</th>
<th>Question</th>
<th>1</th>
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</tr>
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</table>
3. What is tribal sovereignty?

Federally-recognized Tribes and Alaska Native Groups are granted "dependent-independent nation" status by Federal statute. Such recognition provides for self rule, independent governmental structures, government-to-government relationships with the US Government, and independence from State governments. Tribes may have their own judicial systems, and limited laws and regulations with the boundaries of their reserved lands. Tribes may collect and use their own revenues, but are dependent on the US Government for many of their services and much of their financial support, including the US Government's fiduciary trust responsibilities.

Presume you're referring to key legal and fed-agency-to-fed-recognized-tribe relationship perspectives embodied in DoDI 4710.02 and EO 13175.

The state of having inherent rights that are recognized (via laws and treaties) and respected by governments.

Tribal sovereignty refers to tribes' right to govern themselves as domestic, dependent nations. However, as domestic, dependent, they are still beholden to the laws of the U.S. and states within which they reside.

The right of federally recognized tribes to control their own governmental affairs, within limits defined by federal statute and judicial precedent.

Tribal sovereignty is understanding and respecting the needs and feelings of the Tribes. Respecting their leadership and their requirements as they pertain to your installation.

The right of federally recognized tribes to self-govern independent of US Laws

The tribes right to govern themselves in accordance with Treaty rights

The tribes are self-governing nations over their own lands and people, which should be afforded the same respect, interaction, and diplomacy as any nation visiting from outside the U.S. proper.

The right of the tribes for access to and protection of traditional cultural properties, sacred sites, and other items of tribal interest.

The authority to govern themselves.

I have not had training but my understanding at this point is that Tribes are their own nations, equal in legal status with the United States.

The idea that Federally Recognized tribes are to be treated as nations within the United States...Almost like small countries within my state.

Tribes have the right to govern themselves. This includes the ability to have members, their property (land) and businesses regulated under different laws. This also includes the ability to govern their relationship with other government (federal) entities.

Tribal sovereignty is an inherent, retained right to self government.

Status as an independent nation with claim to territory within the US

Their legal standing in regards to how the Federal Government classifies relations with the Tribes. They are sovereign nations, albeit dependent nations within the United States.

The tribes are able to make their own law, rules, and are able to inter in to agreements with the US Government as a equal.

A tribes right to self-govern, control their land and resources, and conduct business as if their own sovereign country.

Tribal sovereignty in the United States is the inherent authority of indigenous tribes to govern themselves within the borders of the United States of America.

Tribes' right to govern themselves, define their own membership, manage tribal property, and regulate tribal business and domestic relations; it further recognizes the existence of a government-to-government relationship between such tribes and the Federal Government
Tribal self government.  
Tribal sovereignty is represented by the fact that Federally-recognized tribes are independent Nations and operate their own governments independent of the US Government.

The inherent authority of indigenous tribes to govern themselves within the borders of the United States of America. The U.S. Federal Government recognizes tribal nations as "domestic dependent nations"  
Tribes are sovereign and have their own laws  
The right to self governing without Federal or State interference.  
right to self govern and requirement for government-to-government level relationship between tribes and the Federal Government.

It is the right of the tribe to govern themselves as dependent individual nations within the US.  
Tribes are considered independent governments, separate from the United States government, and may create their own set of rules and regulations to govern themselves. or...according to Google....Tribal sovereignty in the United States is the inherent authority of indigenous tribes to govern themselves within the borders of the United States of America  
The authority of Tribes to organize and self-govern and to be recognized by the U.S Government as a sovereign entity within but not independent from the United States of America.

Independence from Federal Government  
Don't know ??  
right to govern themselves and have a G-2-G relationship with the US Fed Govt.  
This means that the tribes are their own separate government/nation with the same standing as any other nation.

It gives the tribes the right to govern themselves in the US.  
In legal terminology it is the concept of sovereign governments within the United States.

Tribal sovereignty in the United States is the inherent authority of indigenous tribes to govern themselves within the borders of the United States of America. The U.S. Federal Government recognizes tribal nations as "domestic dependent nations" and has established a number of laws attempting to clarify the relationship between the federal, state, and tribal governments.

Tribes are not fully accountable to all federal law as they serve as their own nation.  
Tribe's legal status, under treaty, law and policy, as separate self governing entities with tribe-internal authority equal to comparable units of state and national government.

Not a good question. Tribes in the US hold quasi-sovereignty and the Fed gov holds a trust relationship responsibility for "dependent nations", which is NOT the same as the sovereign nation status commonly believed of Tribes ... to which I believe this question unfairly alludes. treaty awarded and federally recognized rights of the tribes.  

Tribes are allowed to govern themselves.  
is the inherent authority of indigenous tribes to govern themselves within the borders of the United States of America. The U.S. Federal Government recognizes tribal nations as "domestic dependent nations" and has established a number of laws attempting to clarify the relationship between the federal, state, and tribal governments. (Source: Google)  
Tribal right to create and enforce tribal rules, laws and regulations independent from Federal, state, or local government and/or legal influence.

Tribes are governments in their own right and have authority within their areas of jurisdiction.
"Tribal sovereignty refers to tribes' right to govern themselves, define their own membership, manage tribal property, and regulate tribal business and domestic relations; it further recognizes the existence of a government-to-government relationship between such tribes and the Federal Government."

Gives them legal jurisdiction within tribal boundaries. Supreme Court case law has determined that although tribes are dependent on and ultimately subservient to the US government, on their own reservations they have the powers of a sovereign nation, i.e. the power to pass and enforce their own laws and manage their own resources.

they are there own government. they are not the us or state government.

4. How important do you feel it is to have a cooperative relationship with tribal governments or stakeholders?
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### 5. How much training on tribal and base interactions/relations have you received?

![Bar Chart](chart.png)

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<td>3</td>
<td>4</td>
<td>3</td>
<td>2</td>
<td>4</td>
<td>53</td>
<td>3.74</td>
</tr>
<tr>
<td>2</td>
<td>Tribal Histories</td>
<td>27</td>
<td>5</td>
<td>3</td>
<td>2</td>
<td>3</td>
<td>3</td>
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<td>4</td>
<td>1</td>
<td>5</td>
<td>53</td>
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<tr>
<td>3</td>
<td>Federal Law and Regulations</td>
<td>12</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>4</td>
<td>6</td>
<td>6</td>
<td>7</td>
<td>3</td>
<td>6</td>
<td>53</td>
<td>5.28</td>
</tr>
</tbody>
</table>
6. In your opinion, how are tribal and base relations perceived by the following tribal individuals:

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>4</th>
<th>5</th>
<th>6</th>
<th>7</th>
<th>8</th>
<th>9</th>
<th>10</th>
<th>Total Responses</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Tribal Leaders</td>
<td>10</td>
<td>2</td>
<td>5</td>
<td>3</td>
<td>10</td>
<td>3</td>
<td>6</td>
<td>4</td>
<td>3</td>
<td>6</td>
<td>52</td>
<td>5.19</td>
</tr>
<tr>
<td></td>
<td>Tribal Cultural/Natural Resource Management Staff</td>
<td>6</td>
<td>2</td>
<td>5</td>
<td>1</td>
<td>7</td>
<td>5</td>
<td>6</td>
<td>7</td>
<td>5</td>
<td>8</td>
<td>52</td>
<td>6.10</td>
</tr>
<tr>
<td>2</td>
<td>Tribal Members</td>
<td>11</td>
<td>4</td>
<td>8</td>
<td>5</td>
<td>9</td>
<td>2</td>
<td>4</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>51</td>
<td>4.33</td>
</tr>
</tbody>
</table>
7. Rank these three jurisdictions in order of authority (1=highest level of authority):

<table>
<thead>
<tr>
<th>#</th>
<th>Question</th>
<th>1</th>
<th>2</th>
<th>3</th>
<th>Total Responses</th>
<th>Mean</th>
</tr>
</thead>
<tbody>
<tr>
<td>2</td>
<td>Federal</td>
<td>42</td>
<td>10</td>
<td>0</td>
<td>52</td>
<td>1.19</td>
</tr>
<tr>
<td>1</td>
<td>Tribal</td>
<td>16</td>
<td>23</td>
<td>13</td>
<td>52</td>
<td>1.94</td>
</tr>
<tr>
<td>3</td>
<td>State</td>
<td>4</td>
<td>18</td>
<td>30</td>
<td>52</td>
<td>2.50</td>
</tr>
</tbody>
</table>
9. In your opinion, what effect does your base have on tribal interests?

<table>
<thead>
<tr>
<th>Text Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not much effect here in south TX because most local/regional tribes became extinct or were removed to OK or NM more than a 100 years ago. The base still consults with past-affiliated tribes, but has little effect on their local interests.</td>
</tr>
<tr>
<td>Regarding tribal interests on historic properties (defined via 36 CFR Part 800) upon Air Force lands, when a given tribe (or tribes) attaches such interest the answer is plenty. For tribal interest specific to tribal lands and Indian Country the answer is less often but when it happens noise annoyance and related from air space use over tribal lands can be an issue, a real big one such as for Powder River Training Area (see public web for info on that project asso. with Ellsworth AFB, SD).</td>
</tr>
<tr>
<td>Not much. It seems they simply want to be participants in a process; to be heard. Because tribal reservation property is located within the Military Operating Airspace, the installation has a large impact on the tribes due to aircraft flying in remote areas. It can be disruptive to their economic pursuits and well-being in general. In addition, because of the extensive archaeological record on the test and training range, the base has a duty to protect and properly manage these resources and negotiate, when and where possible, tribal access.</td>
</tr>
<tr>
<td>Minimal at present</td>
</tr>
<tr>
<td>Minimal. We coordinate via the NEPA process but don't get feedback or indications of interest. I am working with multiple installations with identified tribal interests that have not yet been addressed by the installation. The simple act of not consulting with tribes has an effect on tribal interests.</td>
</tr>
<tr>
<td>Very little.</td>
</tr>
<tr>
<td>Due to location and size, mission impacts can have a significant impact to tribal interests. None. We have no identified traditional cultural properties or tribal interests on our installation.</td>
</tr>
<tr>
<td>Little. The tribes have no traditional cultural places here and are not interested in the buildings or landscapes. Their only interest currently is the NAGPRA remains interred here and the items we have curated from several archaeological sites.</td>
</tr>
<tr>
<td>I'm at a headquarters level, so I don't have a &quot;base&quot;.</td>
</tr>
<tr>
<td>N/A</td>
</tr>
<tr>
<td>Quite a bit...Building projects, exercises, flying sorties...all have the potential to impact tribal activity</td>
</tr>
<tr>
<td>Cannon AFB is responsible for running Melrose Air Force Range. While the Range is not considered Tribal Lands we keep in constant with 5 tribes to ensure they have no interest in any of the archeological items found within the Range boundaries. We have only a moderate effect on tribal interest as far as land but we do have flying routes over tribal lands which has a large impact on tribal interest.</td>
</tr>
<tr>
<td>Minimal effect.</td>
</tr>
<tr>
<td>Minimal</td>
</tr>
<tr>
<td>Very little</td>
</tr>
<tr>
<td>We impact them everyday when we overfly their property.</td>
</tr>
<tr>
<td>Very little.</td>
</tr>
<tr>
<td>Not much. When consulted for NEPA processes do not get a lot of tribal interest or inputs. Huge effect.</td>
</tr>
<tr>
<td>Little to none.</td>
</tr>
<tr>
<td>Depending on the extent of an undertaking, the base can have a significant effect on tribal interests. This effect can be either positive or negative.</td>
</tr>
</tbody>
</table>
We have very little effect on tribal interests. The nearest affiliated Tribal Nation to Barksdale AFB is the Caddo Nation of Oklahoma. They are the only Indian tribe claiming cultural affiliation with the base and asserting right of possession and control over any Native American human remains and other cultural items from lands owned or controlled by Barksdale AFB. There is a comprehensive agreement in place between the Caddo Nation and Barksdale AFB that describes our responsibilities in regards to Native American findings at Barksdale AFB. Other than that, the Caddo nation expresses no interest or concerns with the activities of Barksdale AFB and will only get involved when and if anything of cultural or Native American human remains are discovered.

Very little. We do what the tribes tell us to do.

With the AFI 90-2002 being relatively new, it's difficult to say what effect the base has on tribal interests. Presently, the base has little to no effect on tribal interests. However, I feel that will change in time.

None, zero, zilch.

Not much in most instances, there is little interest in specific actions on the base proper. However, regional scale mission/training efforts tend to draw more interest.

Our base is fairly small with only five known archaeological sites, and I feel that we have very little effect on tribal interests. Historically the tribes have not been particularly interested or concerned about management of these sites. We have always consulted with them when a project was in the vicinity of a known site and response has been limited but favorable when received. With the new regulation requiring tribal consultation for any ground disturbing activities, our consultation level has increased significantly. The Seminole Tribe has become much more interested in the potential for archaeological discovery, and has requested Phase I surveys of several upcoming construction projects. This is likely the result of our increased consultation as well as the establishment of the Seminole Tribe as a THPO.

We generally have positive effects from tribal relations despite not having a highly developed tribal relations program. We do not need intensively managed twice yearly face-to-face meetings with tribes since we generally do not have contentious issues with the tribes and have previously established G-2-G relationships.

It has a great effect. We keep tribes posted on conditions of natural resources for the base. This gives them insight on regional conditions of these resources as well as heavy/hands-on involvement in cultural resources.

Tremendous

Major

A lot as we are neighbors: wildlife, fish, noise, etc.

They have NO interests in our base except for NAGPRA

Very little.

Don't have any effect as we have not discovered nor do we have anything that relates to the tribes.

Nothing at this time.

Little

Minimal effects but tribal interests are protected.

Primarily positive economic effects as base personnel participate in tourism and special events at the tribe's resort, casinos and ski area. AF aircraft do fly over the reservation but there has been only one request for flight timing or flight level restrictions in the 25 years of my involvement.

oblique question.
No tribal interest has been documented. We stand a strong chance of excessively pestering the tribes concerned and creating problems. An approach of combining our very small bases that share tribes should be seriously considered. - Alabama/Mississippi/Georgia contain a lot of DoD installations with overlapping flight paths and mission interests.

Little effect
N/A - Not at a base. Not aware of any impacts negative or positive.

Very little.

Our base has minimal effect on tribal interests. Research to date has not shown any revealed any significant tribal presence, and when tribes have been asked previously to comment on various activities the response has been to contact us if you find something.

Advances tribal interests through a cooperative partnership. Airmen visit reservation for recreation and perform various service projects for the Mescalero. The Mescalero provide additional recreation/volunteer opportunities for our Airmen.

Very Good
This installation has no known tribal sites, natural resources, religious sites, or other TCPs. There are no affiliated tribes anywhere near the installation, and few affiliated tribes in the past have shown an interest in consultation. The installation currently has no known effect on tribal interests.

very little to none.

10. Do you believe improved relations and increased training in tribal interactions is necessary and a positive action for your base? Please explain.

Text Response
Improved relations and collaborations with tribes are crucial for the AF to improve land and resource stewardship, increase public support, and fulfill our Federal mandates with support, rather than through litigation and injunctions.

Of course. I have worked many years across state, federal, and private sector as a public service archeologist often involved with tribal concerns. For Air Force, my impression is that in general most AF installations have difficulty in engaging any stakeholders (concerned parties relative to AF mission) when they are "outside the fence" and not within-the-agency. Some installations have better sensitivity to the importance of relations with tribes but to generalize for most it is not considered a major need or opportunity, and training is needed at both working (technical) staff levels and senior leadership (installation commanders, vice-commanders, etc. people at the top). Too complicated to further elaborate on here but BLUF simple "training" alone will help but cannot be expected to solve the problem. Contact me if needed to discuss, Erwin Roemer 937 656 1281 Eastern Time.

Yes. It's about transparency.

Improved relations with tribal stakeholders can greatly benefit the AF by helping to streamline the consultation process related to various AF actions. If the relationships have already been established and a problem is encountered, it's easier to discuss with those you know and come to a mutually agreeable outcome. Because consultation was previously the responsibility of cultural resources management programs, increased training is required for those who will now be more involved and oversee the process. They should understand the importance of consultation, appropriate demeanor/behavior (i.e. status of tribal leaders warrants protocol for visiting dignitaries), and the needs and concerns of those tribes with whom they consult. yes, will grow in coming years as more Virginia tribes achieve federal recognition
no. We have minimal impact to any tribal concerns.
Yes, in particular non-specialists require background training in cultural sensitivity, federal policy on consultation with tribes, and facilitation of tribal face-to-face meetings
Yes, As this process and relationship is not understood by many on the installation, I feel continued and increased training are vital for understanding and improving relations.
No. We do not have any local tribes. The majority of our tribes are displaced and are located over 1,000 miles away from the installation. No tribes have expressed any concerns about any military activities on the installation, and have requested we stop contacting them with multiple letters and phone calls as required by the new AF guidance. Their offices are being overburdened administratively and they cannot afford the time or resources to consult with installations with no tribal interests. Additionally, senior leadership has stated they do not have the time or resources to comply with AFI 90-2002 and certainly cannot attend two face-to-face meetings with displaced tribes annually.
Not at this time.
Yes. We need to spend our limited Federal budget better and to reduce Tribal dependence on dwindling Federal dollars. Improved relations will balance expectations on both sides. More training will assist Federal and Tribal partners to discuss activities as honestly as possible, in order to provide the best action plans possible.
It is important for the bases staff to have great working relationship with their local tribes so they earn their trust.
Yes. Every commander that comes in will lack knowledge of our State’s tribes and with the requirement to meet twice annually, training should definitely be a requirement.

<table>
<thead>
<tr>
<th>Yes. Appointing an ITLO is easy but how do we train that individual to represent the Air Force in a proper manner if tribal protocols etc are not known. Being able to communicate in an effective manner that is seen as respectful is one of the main priorities to accomplishing a working relationship with all tribes. Knowing all of the federal regulations and laws is a basic must for all individuals interacting with tribes.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. Current staff who would interact with tribal representatives have received little or no training in how to successfully interact in a correct government-to-government fashion.</td>
</tr>
<tr>
<td>In our situation, it would not hurt but it is not essential due to the fact that the Native American tribes affiliated with JBSA are not very interested and do not have a strong interest in the land.</td>
</tr>
<tr>
<td>It is a positive action, however it seems to have very little benefit; the local tribes generally do not care what occurs on the base.</td>
</tr>
<tr>
<td>Because of the search and rescue mission of the base and the A-10 flying mission it is important that we have a good working relationship with the tribes. Teach the aircrews about the native American culture is important. We need to listen more and talk less, we have had training on base provided by Tohono O’Odham Nation members for our aircrews.</td>
</tr>
<tr>
<td>Maybe. In past, very little interest has been expressed by Tribes that &quot;lay claim&quot; to our base. They often do not respond to consultation and when they do, very rarely do they have any comments.</td>
</tr>
<tr>
<td>Do not think a lot training will change anything. The command military turnover rate is about every 18 months, so if you did training it would have to be on a once a year basis to be effective. Soon as you train someone they transfer to another command. Unless you could get a civilian GS-12 or above to be permanent basis</td>
</tr>
<tr>
<td>Tribal governments are equal/exceed Federal Government in some areas - Proper training/interactions are required for positive interactions.</td>
</tr>
<tr>
<td>Yes. I think any positive interactions can be beneficial.</td>
</tr>
</tbody>
</table>
Yes, I believe that improved relations and more useful training in tribal interactions is necessary. The current relationship with the tribe is good, but could definitely be improved. Training needs to be innovative and interesting, rather than just another box to check. Yes. Our relationship with the Caddo Nation of Oklahoma is sufficient to cover any findings that may arise at Barksdale AFB. Currently, however, relations are totally cut-off with the Caddo Nation until they resolve an election dispute for Tribal Chairperson. Prior to this dispute starting up, Barksdale had open communications with the Caddo Nation. After this dispute, we are unable to make contact with our previous sources.

Not sure there is much value I do believe that increased training and tribal interactions is necessary to provide a positive relationship between two government agencies. By knowing the other person, it help in any planning process to, hopefully, overcome potential stumbling points so any meeting is relatively smooth and issue free. No. 13 tribes, all displaced, and only 1 ever responds to the deluge of information the base is now required to send. The commander has other priorities and training won't help. If the Air Force cultural community truly wants compliance with AFI 90-2002, they would communicate with leadership at their level ... MAJCOM commanders, etc. Instead, a 90 series requirement is being levied on the lowest levels, the installation cultural managers. Probably, a firm understanding of base operational impacts related to resource concerns for any tribe will likely help shape guidance for future planning efforts and should provide for more efficient communication between base and tribal staff.

A year ago, I would have said 'no', but since the Seminole Tribe now seems much more interested in participating in consultation, and has actually requested Phase I surveys recently, I believe we need to be better trained on tribal interactions. This should help improve tribal relations.

On paper, yes. However, more training does not necessarily equate to better tribal relations. If this program were really that important to the USAF, installations would have dedicated staff to handle these issues. Many installations in the eastern US use a single collateral-duty staffer to do this plus all the other stuff they do. And this is fine, until the wheels fall off and you need to reassess. You should focus the training specifically for installation Commander's let it trickle down if you want culture change in the USAF and want better tribal relations. Yes I do. Myself, I have had a significant amount of training but others that are involved in the tribal program have not. The communication course sponsored by the DOD or something similar should be mandatory for all environmental and Range personnel involved in areas that relate directly or indirectly to tribal consultation. CRM and tribal liaisons should also have yearly updates on communications with the tribes since it is easy to fall into a un-empathetic approach to tribal consultation.

Yes, they need to understand roles and establish communication is crucial in maintaining and improving relations. Training would benefit all involved.

Yes. DoD and the AFI made an ITLO position but gave no manning or federal position. This is completely ineffective. I as the CRM am buried in the managerial chain making me minimally effective in communicating with the CC. I do the best I can and understand my management’s decision to move it elsewhere. The regulations promote failure under their definitions. The tribes are becoming irritated...extremely irritated with the steps we have to follow under the new Tribal relations AFI. They only want to interact on NAGPRA issues and ARPA when it effects prehistoric archaeological sites.
This would not be a great necessity and would not have a big impact on the base. There are no tribes that associate themselves culturally with the land on which this base sits. There have been no tribal resources identified at this base. The only interest the tribes have at this base is with any inadvertent discoveries or any projects that might affect the 7 Adena Indian mounds located on base.

Yes, I do feel that training on tribal matters is important, as it will help me, the Cultural Resource Manager with my job. And it would show that the base feels that all stakeholders are important.

Yes, Native American culture has been neglected for a long time.

I think increased training and awareness is highly beneficial. However, positive action for our base would be little, as we have found nothing of interest to Tribes in the multiple surveys accomplished thus far.

No. There is little tribal interests at our base and we receive no response, despite repeated attempts to correspond concerning undertakings. If and when tribes express an interest in having a relationship with the AF, then we should increase our interactions.

I don't believe there is much need at this base. Interaction has been successful over the years. Awareness and interaction training for Base and Group Commanders, Airspace, Cultural Resources and Public Affairs managers should be given at or prior to their entry into the positions that do carry interaction obligations.

Yes. Positive cooperative relationships in mission planning and completion rely on people understanding each others needs and priorities.

<table>
<thead>
<tr>
<th>1) improved relations would help in obtaining NEPA and INRMP responses</th>
<th>2) training must include PA and wing staff to get any traction.</th>
<th>3) our tribes were all relocated in 1830 to Oklahoma, the ground was divided, tilled and filled. Any meaningful relationship will be over flight path issues, INRMP and contracts.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes. Although the Tribes have little interest in our activities and they are overwhelmed with constant correspondence. I think the twice yearly face to face requirement is not practical.</td>
<td>Those bases that have a lot of interaction with the tribes already meet frequently, others have no need to meet that frequently and it is an imposition on the Tribes.</td>
<td>Sure, I don't believe that these issue is well-known by folks...affected or unaffected.</td>
</tr>
<tr>
<td>Yes, any positive relationship with other governments and tribal entities is necessary for Section 106 and other legal compliance.</td>
<td>Given the paucity of tribal interests in this base, I'm skeptical about the need for improved training, though I am open to the possibility that my skepticism stems from lack of knowledge. Improved relations will always be positive. Increased training is unnecessary at Holloman because of our ongoing positive relationship.</td>
<td>Yes Our base has 300+ historical sites, many of them related to Native American culture. New sites are always popping up, even within the cantonment area, therefore attention needs to be paid. there should be the same amount of effort applied to NA sites, as to Colonial American and Civil War sites.</td>
</tr>
<tr>
<td>Yes, ethically and symbolically. The installation may have resources of interest to affiliated tribes, who have not revealed them in the past because contact has been sporadic: a good-faith effort to establish meaningful relations with affiliated tribes is a regulatory and ethical requirement. Even if the tribes don't show interest, or do show an interest but have few or no resources on the installation to discuss, the attempt at relationship-building is symbolically important. It acknowledges the tribes' continued cultural ties and legal rights to their traditional lands.</td>
<td>yes. right now no one does it. it is too hard and resource intensive for very little, If any, payback (my estimation of why they don't).</td>
<td></td>
</tr>
</tbody>
</table>
Appendix B: IRB Application for the USAF Tribal Relations Survey Project

THE UNIVERSITY OF MONTANA-MISSOULA
Institutional Review Board (IRB)
for the Protection of Human Subjects in Research
CHECKLIST / APPLICATION

At the University of Montana (UM), the Institutional Review Board (IRB) is the institutional review body responsible for oversight of all research activities involving human subjects outlined in the U.S. Department of Health and Human Services’ Office of Human Research Protection and the National Institutes of Health, Inclusion of Children Policy Implementation.

Instructions: A separate application form must be submitted for each project. IRB proposals are approved for no longer than one year and must be continued annually (unless Exempt). Faculty and students may email the completed form as a Word document to IRB@umontana.edu, or submit a hardcopy to the Office of the Vice President for Research & Creative Scholarship, University Hall 116. Student applications must be accompanied by email authorization by the supervising faculty member or a signed hard copy. All fields must be completed. If an item does not apply to this project, write in: n/a.

1. Administrative Information

| Project Title: US Army Corps of Engineers-UM Contract, Task Order 0002, Tribal Relations Training Package |
| Principal Investigator: Kelly Dixon | UM Position: Professor |
| Department: Anthropology | Office location: SS 244 |
| Work Phone: 406-243-5681 | Cell Phone: 612-247-6414 |

2. Human Subjects Protection Training (All researchers, including faculty supervisors for student projects, must have completed a self-study course on protection of human research subjects within the last three years [http://www.umt.edu/research/complianceinfo/IRB/] and be able to supply the “Certificate(s) of Completion” upon request. If you need to add rows for more people, contact the IRB office for assistance.)

<table>
<thead>
<tr>
<th>All Research Team Members (list yourself first)</th>
<th>PI</th>
<th>CO-PI</th>
<th>Faculty Supervisor</th>
<th>Research Assistant</th>
<th>DATE COMPLETED Human Subjects Protection Course</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name: Kelly Dixon</td>
<td>×</td>
<td></td>
<td></td>
<td></td>
<td>4/1/2013</td>
</tr>
<tr>
<td>Email: <a href="mailto:kelly.dixon@mso.umt.edu">kelly.dixon@mso.umt.edu</a></td>
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<td></td>
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</tr>
<tr>
<td>Name: Martin Lopez</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6/24/2015</td>
</tr>
<tr>
<td>Email: <a href="mailto:zion.noiz@yahoo.com">zion.noiz@yahoo.com</a></td>
<td></td>
<td></td>
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</tr>
<tr>
<td>Name: Nicholas Shankle</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>1/26/2015</td>
</tr>
<tr>
<td>Email: <a href="mailto:nicholas.shankle@umconnect.umt.edu">nicholas.shankle@umconnect.umt.edu</a></td>
<td></td>
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</tr>
<tr>
<td>Name: Katie Stevens Goidich and Bethany Hauer (staff)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>6/20/2015, KSG; 6/15/2015, BH</td>
</tr>
<tr>
<td>Email: <a href="mailto:katie.stevens@mso.umt.edu">katie.stevens@mso.umt.edu</a>; <a href="mailto:bethany.hauer@mso.umt.edu">bethany.hauer@mso.umt.edu</a></td>
<td></td>
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</tbody>
</table>

3. Project Funding (If federally funded, you must submit a copy of the abstract.)

<table>
<thead>
<tr>
<th>Is grant application currently under review at a grant funding agency?</th>
<th>Yes (If yes, cite sponsor on ICF if applicable)</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has grant proposal received approval and funding?</td>
<td>Yes (If yes, cite sponsor on ICF if applicable)</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Agency</th>
<th>Grant No.</th>
<th>Start Date</th>
<th>End Date</th>
<th>PI on grant</th>
</tr>
</thead>
<tbody>
<tr>
<td>US Army Corps of Engineers-US Air Force</td>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

63
**IRB Determination:**

- Not Human Subjects Research
- Approved by Exempt Review, Category # (see memo)
- Approved by Expedited Review, Category # (see Note to PI)
- Full IRB Determination
- Approved (see Note to PI)
- Conditional Approval (see memo) - IRB Chair Signature/Date: 
- Conditions Met (see Note to PI)
- Resubmit Proposal (see memo)
- Disapproved (see memo)

**Note to PI:** Non-exempt studies are approved for one year only. Use any attached IRB-approved forms (signed/dated) as “masters” when preparing copies. If continuing beyond the expiration date, a continuation report must be submitted. Notify the IRB if any significant changes or unanticipated events occur. When the study is completed, a closure report must be submitted. Failure to follow these directions constitutes non-compliance with UM policy.

**Risk Level:** __________________________
Final Approval by IRB Chair/Manager: __________________________Date: ________________Expires: ________________
4. **Purpose of the Research Project (not to exceed 500 words):** Briefly summarize the overall intent of the study. Your target audience is a non-researcher. Include in your description a statement of the objectives and the potential benefit to the study subjects and/or the advancement of your field. Generally included are literature related to the problem, hypotheses, and discussion of the problem's importance. Expand box as needed.

As part of the University of Montana's (UM's) cooperative agreement with the US Army Corps of Engineers, we have been tasked to develop materials to support the annual meetings required by the new Air Force Instructions (AFI) 90-2002: Air Force Interactions with Federally-Recognized Tribes (19 November 2014). The newly published AFI requires wing and/or base commanders to: A) Appoint Installation Tribal Liaisons; B) More fully engage the leaders of their affiliated federally-recognized tribes; and C) Meet together with tribal leaders at least twice per year or at a frequency mutually agreed upon, as stipulated in section 2.9.1 of the AFI. The AFI goals are to increase the effectiveness of AF consultations with federally-recognized tribes, increase collaborative planning between tribes and installations, and more fully meet the requirements and intents of federal laws that require federal agencies to consult with tribes concerned about natural and cultural resources on agency lands.

To uphold the AFI 90-2002 requirements, UM Department of Anthropology Professor Kelly J. Dixon's Center for Integrated Research (CIRE) Cultural Resource team has been tasked with providing Tribal Relations Training Package services to the Air Force Civil Engineer Center (AFCEC) to complete two separate tasks for AF installations in 49 States (note that we are not working with USAF installations in Hawai'i). Task 1 is to design a Sustainable Tribal Consultation Program to implement and educate USAF personnel about best consultation practices and the logistics of running annual or biannual meetings. Task 2 represents the training package that accompanies Task 1; as part of Task 2’s training package, the UM CIRE team will provide an instructional workshop dedicated to guiding USAF commanders and/or staff through the Program. The two tasks are called out separately for reporting purposes, but are intended to be two interdependent components of the project and will adhere directly to the regulations outlined in AFI 90-2002.

As part of this project, we will be sending out surveys to USAF base commanders/staff and Tribal Government officials to evaluate tribal relations with the USAF so that information can be included in the training package. We will also want to have the participants in our trial run training session (tentatively scheduled for March 2016) fill out surveys that evaluate the training session. Documentary film shorts will be part of the training package as well; thus, we will be interviewing people (USAF/DoD and Tribal representatives) about their experiences with tribal consultation for some of these documentary segments, with the intent the the interviews will be used for educational/training purposes that dovetail with the requirements of AFI 90-2002.

4.1 What do you plan to do with the results? If not discussed above, include considerations such as whether this is a class project, a project to improve a program/school system, and/or if the results will be generalized to a larger population, contribute to the general field of knowledge, and/or be published/presented in any capacity.

The results of this research will be included in the training package noted in Item #4 above and will also be summarized in the M.A. theses of Department of Anthropology graduate students Martin Lopez and Nicholas Shankle.

<table>
<thead>
<tr>
<th>Is this part of a thesis or dissertation?</th>
<th>No</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>If yes and other than the PI’s, then whose?</td>
<td>Martin Lopez and Nicholas Shankle.</td>
<td></td>
</tr>
</tbody>
</table>

5. **IRB Oversight**

Is oversight required by other IRB(s) [e.g., tribal, hospital, other university] for this project? No Yes

If yes, please identify IRB(s):

We are not sure at this juncture. After discussion with UM's IRB, we came to the conclusion that UM's IRB will be enough. However, if we end up doing a training session in Montana at some point in the future, then we may want to present this to the Montana-Wyoming Tribal Leaders Council.

6. **Subject Information:**

6.1 **Human Subjects (identify, include age/gender):**

Subjects are professionals who work for the US Air Force (e.g., Base Commanders, Tribal Liaisons, Cultural Resource Managers) or who work for Tribal agencies (e.g., Tribal Chairs, Tribal Council Members, Tribal Historic Preservation Officers). These individuals will be targeted because of their job titles and will be asked questions about their jobs, specifically the history of interactions and consultation between Department of Defense and Tribal agencies. There may also be instances in which a subject suggests another possible source (snowball effect) to address questions about the history of such interactions. The subjects will be both male and female, and in ALL cases subjects will be over the age of 18. Appendix B includes the correspondence with the USAF about the role of the survey results.
in the overall training package the USAF has asked us to prepare; this correspondence demonstrates the collaborative efforts between UM and the USAF and the USAF's role in assisting with connecting us with the appropriate parties.

6.2 How many subjects will be included in the study?  ~1500

6.3 Are minors included (under age 18, per Montana law)? □ Yes  ✗ No
   If yes, specify age range: to

6.4 Are members of a physically, psychologically, or socially vulnerable population being specifically targeted?
   □ Yes  ✗ No
   If yes, please explain why the subjects might be physically, psychologically or socially vulnerable:

6.5 Are there other special considerations regarding this population? □ Yes  ✗ No
   If yes, please explain:

6.6 Do subjects reside in a foreign country? □ Yes Specify country:  ✗ No
   If yes, please fill out and attach Form RA-112, Foreign Site Study Appendix

6.7 How are subjects selected or recruited? Include a bulleted list of inclusion/exclusion criteria. (Attach copies of all flyers, advertisements, etc., that will be used in the recruitment process as these require UM-IRB approval)

   Subjects are selected based on the fact that they work as professionals involved in tribal consultation--either as tribal members working as a Council Member/Tribal Historic Preservation Officer or as US Air Force staff working as Tribal Liaison/Cultural Resource Manager. There may also be instances in which a subject suggests another possible source (snowball effect). The graduate students working on this project are preparing a list of contacts working in these positions at 75 US Air Force bases and for 566 federally recognized tribes.

6.8 How will subjects be identified in your personal notes, work papers, or publications: (may check more than one)
   ✗ Identified by name and/or address or other
   (Secure written [e.g., ICF] or verbal permission to identify; if risk exists, create a confidentiality plan.)
   ✗ Confidentiality Plan
   (Identity of subjects linked to research, but not specific data [e.g., individuals identified in ICF but not included in publications]; identification key kept separate from data; or, data collected by third party [e.g., Select Survey, SurveyMonkey, etc.] and identifiers not received with data.)
   □ Never know participant’s identity
   (An ICF may be unnecessary [e.g, anonymous survey, paper or online] unless project is sensitive or involves a vulnerable population.)

6.9 Describe the means by which the human subject’s personal privacy is to be protected, and the confidentiality of information maintained. If you are using a Confidentiality Plan (as checked above), include in your description a plan for the destruction of materials that could allow identification of individual subjects or the justification for preserving identifiers.

   Subjects will be identified by name, if necessary, more for the purposes of giving credit for information or quoting than any other reason. Materials collected will be archived in the University of Montana's Department of Anthropology (Social Science Building Room 244 and Room 259b) unless otherwise specifically stated (i.e. Mansfield Library Archives and Special Collections). This project will be using the Informed Consent Form (Appendix A) and/or a Statement of Confidentiality (Appendix C) that will accompany the online survey.

   Appendix C is the statement of confidentiality that will introduce participants to the online survey; please note that we will have made previous contact with participants before they receive this survey and statement of confidentiality.

   Appendix D includes a pdf version of the draft Qualtrics surveys developed in consultation with the USAF.
6.9a Will subject(s) receive an explanation of the research – separate from the informed consent form (if applicable) – before and/or after the project?  □ Yes (attach copy and explain when given)  ■ No

7. Information to be Compiled

7.1 Explain where the study will take place (physical location not geographic. If permission will be required to use any facilities, indicate those arrangements and attach copies of written permission):
The surveys will be emailed to individuals on the contact list via a tool such as Survey Monkey, unless respondents prefer a hard copy. We will reach out to the individuals first via email and will follow-up with teleconferences if necessary. However, the bulk of the survey will rely on electronic correspondence and so the physical location of the "study" taking place will be in our laboratories and offices in the Social Science Building (e.g., SS 244 and SS 259b).

7.2 Will you be working with infectious materials, ionizing radiation, or hazardous materials? Please specify.
N/A

7.3 Subject matter or kind(s) of information to be compiled from/about subjects:
Information collected from subjects will be about the history of subjects' professional experiences related to tribal consultation. The information will be related to what they do for their jobs -- thus, this survey is intended to fall within the parameters of professional positions in the field of cultural heritage.

7.4 Activities the subjects will perform and how the subjects will be used. Describe the instrumentation and procedures to be used and kinds of data or information to be gathered. Provide enough detail so the IRB will be able to evaluate the intrusion from the subject’s perspective (expand box as needed):
Activity will primarily include completing surveys. In a few limited cases, some subjects will be asked to provide their responses via audio and/or visual recording for documentary film segments that will be used as part of the training package the US Air Force has tasked us with creating.

7.5 Is information on any of the following included? (check all that apply):
□ Sexual behavior  □ Drug use/abuse  □ Alcohol use/abuse  □ Illegal conduct  □ Information about the subject that, if it became known outside the research, could reasonably place the subject at risk of criminal or civil liability or be damaging to the subject’s financial standing or employability.

7.6 Means of obtaining the information (check all that apply). Attach questionnaire or survey instrument, if used:
□ Field/Laboratory observation  □ In-person interviews/survey  □ Blood/Tissue/Urine/Feces/Semen/Saliva  □ Telephone interviews/survey  Sampling (IBC Application must be submitted)  □ On-site survey  □ Medical records (require HIPAA form)  □ Mail survey  □ Measurement of motions/actions  □ Online survey (attach Statement of Confidentiality)  □ Use of standard educational tests, etc.  □ Examine public documents, records, data, etc.  □ Other means (specify):  □ Examine private documents, records, data, etc.

7.7 Will subjects be (check all that apply):
□ Videotaped  □ Audio-taped  □ Photographed  □ N/A (securing an additional signature is recommended on consent/assent/permission forms)
Explain how above media will be used, who will transcribe, and how/when destroyed:
Consent to be photographed and recorded (audio and visual) is included in the Informed Consent Form. In the case of audio or visual recordings for the documentary segments that will be part of this project, the recordings may be archived with the Mansfield Library Archives and Special Collections on the University of Montana campus if given written permission from the subject. An additional form can also be obtained upon placing the documentation with Archives and Special Collections which provides the opportunity for the subject to request the documentation to be unavailable for further research activity for a specified period of time.

7.8 Discuss the benefits (does not include payment for participation) of the research, if any, to the human subjects and to scientific knowledge (if the subjects will not benefit from their participation, so state):
The research being conducted will add to the knowledge base about the US Air Force’s interactions and relationships with Tribal leaders that will contribute to the USAF’s mission as stated in AFI 90-2002.
7.9 Cite any payment for participation (payment is not considered a benefit):

N/A

7.9a Outline, in detail, the risks and discomforts, if any, to which the human subjects will be exposed (Such deleterious effects may be physical, psychological, professional, financial, legal, spiritual, or cultural. As a result, one can never guarantee that there are no risks – use “minimal.” Some research involves violations of normal expectations, rather than risks or discomforts; such violations, if any, should be specified):

N/A

7.9b Describe, in detail, the means taken to minimize each such deleterious effect or violation::

N/A

8. Informed Consent

An informed consent form (ICF) is usually required, unless subjects remain anonymous or a waiver is otherwise justified below. (Templates and examples of Informed Consent, Parental Permission, and Child’s Assent Forms are available at http://www.umt.edu/research/complianceinfo/irb/forms.aspx).

- A signed copy of the consent/assent/permission form must be offered to all subjects, including parents/guardians of subjects less than 18 years of age (minors).
- Use of minors
  - All minor subjects (under the age of 18) must have written parental or custodial permission (45 CFR 46.116(b)).
  - All minors from 10 to 18 years of age are required to give written assent (45 CFR 46.408(a)).
  - Assent by minor subjects: All minor subjects are to be given a clear and complete picture of the research they are being asked to engage in, together with its attendant risks and benefits, as their developmental status and competence will allow them to understand.
  - Minors less than 10 years of age and all individuals, regardless of age, with delayed cognitive functioning (or with communication skills that make expressive responses unreliable) will be denied involvement in any research that does not provide a benefit/risk advantage.
    - Good faith efforts must be made to assess the actual level of competence of minor subjects where there is doubt.
    - The Minor Assent Form must be written at a level that can be understood by the minor, and/or read to them at an age-appropriate level in order to secure verbal assent.

- Is a written informed consent form being used?  Yes (attach copy)  No (justify below)
To waive the requirement for written informed consent (45 CFR 46.117), describe your justification:

- Is a written parental permission form being used?  Yes (attach copy)  No
  (If yes, will likely require minor assent form)
- Is a written minor assent form being used?  Yes (attach copy)  No
  (If yes, will likely require parental permission form)

Principal Investigator’s Statement

By signing below, the Principal Investigator agrees to comply with all requirements of The University of Montana-Missoula IRB, the U.S. Department of Health and Human Services Office of Human Research Protection Guidelines, and NIH Guidelines. The PI agrees to ensure all members of his/her team are familiar with the requirements and risks of this project, and will complete the Human Subject Protection Course available at http://www.umt.edu/research/complianceinfo/irb.

I certify that the statements made in this application are accurate and complete. I also agree to the following:

- I will not begin work on the procedures described in this protocol, including any subject recruitment or data collection, until I receive final notice of approval from the IRB.
- I agree to inform the IRB in writing of any adverse or unanticipated problems using the appropriate form. I further agree not to proceed with the project until the problems have been resolved.
• I will not make any changes to the protocol written herein without first submitting a written Amendment Request to the IRB using form RA-110, and I will not undertake such changes until the IRB has reviewed and approved them.
• It is my responsibility to ensure that every person working with the human subjects is appropriately trained.
• All consent forms and recruitment flyers must be approved and date-stamped by the IRB before they can be used. The forms will be provided back to the PI in PDF format with the IRB approval email. Copies must be made from the date-stamped version. All consent forms given to subjects must display the IRB approval date-stamp.
• I understand that it is my responsibility to file a Continuation Report before the project expiration date (does not apply to exempt projects). This is not the responsibility of the IRB office. Tip: Set a reminder on your calendar as soon as you receive the date. A project that has expired is no longer in compliance with UM or federal policy.
• I understand that I must file a Closure Report (RA-109) when the project is completed, abandoned, or otherwise qualifies for closure from continuing IRB review (does not apply to exempt projects).
• I will keep a copy of this protocol (including all consent forms, questionnaires, and recruitment flyers) and all subsequent correspondence with the IRB.
• I understand that failure to comply with UM and federal policy, including failure to promptly respond to IRB requests, constitutes non-compliance and may have serious consequences impacting my project and my standing at The University of Montana.

Signature of Principal Investigator: Kelly J. Dixon Date: June 28, 2015
(Type for electronic submission; sign for hard copy)

NOTE: I AM AWARE that electronic submission of this form from my University email account constitutes my signature.

Students and Faculty Advisors: Student applications must be accompanied by either an email authorization from the supervising faculty member or by a signed hard copy (below).

Faculty Supervisor:

My signature confirms:
1) I have read the IRB Application and attachments.
2) I agree that it accurately represents the planned research.
3) I will supervise this research project.

Faculty Advisor Signature: Date: 
(Type for electronic submission; sign for hard copy)

Department: Phone: 
Appendix A: SUBJECT INFORMATION AND INFORMED CONSENT

Study Title: US Army Corps of Engineers-UM Contract, Task Order 0002, Tribal Relations Training Package

Investigator(s): Kelly Dixon, Associate Professor, The University of Montana, Department of Anthropology, 32 Campus Drive, Social Science Building, Missoula, Montana, U.S.A. 59812, kelly.dixon@mso.umt.edu, 612-247-6414

Martin Lopez, Graduate Student, The University of Montana, Department of Anthropology, 32 Campus Drive, Social Science Building, Missoula, Montana, U.S.A. 59812, martin.lopez@umontana.edu, 406-214-5012

Nicholas Shankle, Graduate Student, The University of Montana, Department of Anthropology, 32 Campus Drive, Social Science Building, Missoula, Montana, U.S.A. 59812, nicholas.shankle@umconnect.umt.edu, 406-214-7753

Purpose:
- You are being asked to take part in a survey about your professional experience working with the US Department of Defense or with Tribal Leaders on projects that involve tribal consultation.
- As part of the University of Montana's (UM's) cooperative agreement with the US Army Corps of Engineers, we have been tasked to develop materials to support the annual meetings required by the new Air Force Instructions (AFI) 90-2002: Air Force Interactions with Federally-Recognized Tribes (19 November 2014). The information you provide in this survey will be used to evaluate Tribal relations with the USAF so that your feedback can be included in the training package we are preparing.
- The information you provide will also be included in the M.A. theses of UM graduate students Martin Lopez or Nicholas Shankle; both theses will report on and evaluate the results of this project.

Procedures:
- The survey includes questions about your professional background and about your interactions with Tribal Government officials and/or about your interactions with DoD/USAF officials.
- The online survey will take approximately 10-15 minutes.
- Survey results and other materials collected will be archived with other research from the project at the University of Montana (Social Sciences Building, Room 244 and Room 259b) and will be available for review by subjects at any time.

Risks/Discomforts: There is no anticipated discomfort for those contributing to this study, so risk to participants is minimal.

Benefits: There is no promise that you will receive any benefit from taking part in this study.

Confidentiality:
- If the results of this study are presented in a report, written in a scientific journal, presented at a scientific meeting, or in any publication (including but not limited to the primary researcher’s master’s thesis), your name will not be used without your consent.
- Your initials__________ indicate your permission to be identified by name in any publications or presentations.
- If you do not want to be acknowledged by name in any publications or presentations,
please initial here __________.

Voluntary Participation/Withdrawal:
- Your decision to take part in this research study is entirely voluntary.
- You may refuse to take part in or you may withdraw from the study at any time.

Questions:
- If you have any questions about the research now or during the study, please contact Martin Lopez or Nicholas Shankle (contact information listed above) by email or by phone.
- You can also contact the UM Institutional Review Board (IRB) at (406) 243-6672.

Statement of Consent:
I have read the above description of this research study. I have been informed of the risks and benefits involved, and all my questions have been answered to my satisfaction. Furthermore, I have been assured that any future questions I may have will also be answered by a member of the research team. I voluntarily agree to take part in this study. I understand I will receive a copy of this consent form.

Printed Name of Subject

________________________________________

Subject's Signature                      Date

Statement of Consent to be Photographed and/or audio/visual recorded:
- I understand that photographs/audio/video recordings may be taken during the study.
- I consent to having my photograph taken and/or being audio/video recorded.
- I consent to use of my photograph/audio/video in presentations related to this study.
- I understand that if photographs/audio/video recordings are used for presentations of any kind, names or other identifying information will not be associated with them without consent.

________________________________________

Subject's Signature                      Date
Appendix B: EMAIL CORRESPONDENCE DOCUMENTING THE COLLABORATION WITH THE USAF ON THE SURVEYS FOR THIS PROJECT

Study Title: US Army Corps of Engineers-UM Contract, Task Order 0002, Tribal Relations Training Package

-----Original Message-----
From: Dixon, Kelly [mailto:Kelly.Dixon@mso.umt.edu]
Sent: Thursday, June 18, 2015 4:02 PM
To: WILDE, JAMES D GS-14 USAF AFCEC AFCEC/CZTQ
Subject: RE: USAF-USACE-UM-CIRE Surveys and IRB Review

Hello again, Jim, and thanks for such a thoughtful email about the survey phase of this project.

Yes, the final survey forms have an option for numbered input/entry.

You make a good point about allowing the option of identifying oneself if one wants, but have the default be anonymous except for the Tribe or AF unit/base.

We will make sure that the cover letters/emails that accompany the forms articulate that the surveys support a Tribal Relations Training Program for AFI 90-2002, "AF Interactions with Federally-Recognized Tribes," (19 Nov 2014), which is being developed by the Anthropology Department, University of Montana in cooperation with the Air Force Civil Engineer Center.

Great idea to add your name as the AF point of contact (POC) and one of our names as UM POC, in case anyone has questions or concerns about the project or program. Will do that, too.

UM has a license to use Qualtrics, which is more secure than SurveyMonkey and which is recommended by our IRB. So we had planned on going that route if that sounds good to you.

Thanks again and please let me know if you have any follow-up questions -- or if I missed answering any of your questions. :)

All best,

Kelly

Kelly J. Dixon
Professor
The University of Montana
Department of Anthropology
Social Science Building
32 Campus Drive
Missoula, MT 59812 USA
kelly.dixon@mso.umt.edu

Associate Director
Cultural Resource Division
Hello Ms Dixon;

Thank you for sending for my review the two draft opinion survey forms proposed by your two graduate students. The questions on the forms seem adequate and useful. Will the final survey forms have bars or scales for number inputs? Or boxes for a number entry? I assume so, to provide participants a specific and comfortable place for each answer. You might also think about allowing the option of identifying oneself if one wants, but have the default be anonymous except for the Tribe or AF unit/base. More people might participate, and provide more honest answers if they don't have to identify themselves.

I do recommend extra care be taken in writing the cover letters or emails that accompany the forms, so that every participant knows the surveys support a Tribal Relations Training Program for AFI 90-2002, "AF Interactions with Federally-Recognized Tribes," (19 Nov 2014), which is being developed by the Anthropology Department, University of Montana in cooperation with the Air Force Civil Engineer Center. In other words, an expansion of the short introductory paragraph on the form itself. I also recommend adding my name as the AF point of contact (POC) and one of your names as UM POC, in case anyone has questions or concerns about the project or program.

If you like, I can get the eDASH webpage owners to turn the final USAF questions into an eDASH survey for anyone interested to complete during a specific period. I don't know if that would cause duplication problems. Or, perhaps the students could use Survey Monkey or another Internet survey application to collect these data. I believe most of the tribal government offices have Internet access.

jim

Dr James D Wilde, RPA
AF Cultural Resources Subject Matter Expert (SME) AF Civil Engineer Center JBSA Lackland, TX
210-925-5192
DSN 945-5192
Hello Jim,

Thanks for your time during our telephone meeting today where we discussed upcoming meeting in September at Kirtland and where we discussed the surveys we want to send out to USAF and Tribal leaders. I am sending this email so you can have a summary of that general plan.

As part of the tribal consultation training package project, we will be sending out surveys to USAF staff and Tribal Government officials to evaluate Tribal relations with the USAF so that information can be included in the training package; we will also want to have the participants in our trial run training session (tentatively scheduled for March 2016) fill out surveys that evaluate the training session. Documentary film shorts will be part of the training package as well, and so we will be interviewing people (USAF/DoD and Tribal representatives) about their experiences with tribal consultation for some of these documentary segments, with the intent the interviews will be used for educational/training purposes that dovetail with the requirements of AFI 90-2002.

Two UM M.A. students working on this project have prepared the draft surveys that we emailed to you for review on the morning of 6/16/2015. As we noted during our teleconference, the results of the surveys will be included in their two M.A. theses (one dedicated to summarizing the Tribal perspective and other dedicated to summarizing the USAF perspective). We will share results with you and will give you the final theses that will document the process of this project to accompany the training package so you can have those on file.

Please feel free to share this email with your panel when you meet on 6/17/2015. Once you all review, could you please respond to this email [and/or elaborate on the plan noted here] to indicate that you are aware of our plans with the surveys so we can attached that to our IRB application. If you need anything else, please let me know. I will be in the field with the forensic canines most of the day tomorrow, so will be slow in responding to emails until Thursday.

Thanks so much and have a great afternoon,

Kelly

Kelly J. Dixon
Professor
The University of Montana
Department of Anthropology
Social Science Building
32 Campus Drive
Missoula, MT 59812 USA
kelly.dixon@mso.umt.edu
Appendix C: CONFIDENTIALITY STATEMENT TO ACCOMPANY ONLINE SURVEY

Study Title: US Army Corps of Engineers-UM Contract, Task Order 0002, Tribal Relations Training Package

The University of Montana’s Center for Integrated Research on the Environment (CIRE), in conjunction with the U.S. Air Force Civil Engineer Center (AFCEC), is conducting this survey of all Air Force Base personnel who interact with Tribal Governments, or might do so in the future. The information you provide in this survey will directly affect the Tribal Relations Training Program for AFI 90-2002, “AF Interactions with Federally-Recognized Tribes” (19 Nov 2014), which is being developed by the Department of Anthropology at the University of Montana in cooperation with AFCEC. This online survey should take about 10-15 minutes to complete. Participation is voluntary and participants will remain anonymous unless they want to identify themselves. Responses will be kept anonymous. However, due to the electronic nature of this survey some technical information may be collected regarding email addresses and IPs; this information will not be connected with participants in our records and is stored on US secure servers.

You have the option to not respond to any questions that you choose. Participation or nonparticipation will not impact your relationship with AFCEC or the University of Montana. Submission of the survey will be interpreted as your informed consent to participate and that you affirm that you are at least 18 years of age.

If you have any questions about the research, please contact the Principal Investigator, Dr. Kelly J. Dixon, via email at kelly.dixon@mso.umt.edu or the AFCEC POC Dr. Jim Wilde at james.wilde@us.af.mil. If you have any questions regarding your rights as a research subject, contact the UM Institutional Review Board (IRB) at (406) 243-6672.

Please print or save a copy of this page for your records.

*I have read the above information and agree to participate in this research project.*

_____ Enter survey
Appendix D1: PDF VERSION OF DRAFT QUALTRICS ONLINE SURVEY TO BE SENT TO TRIBAL GOVERNMENT REPRESENTATIVES

Study Title: US Army Corps of Engineers-UM Contract, Task Order 0002, Tribal Relations Training Package

**Default Question Block**

**Q1.** How would you rank your Tribe's relationship with U.S. Air Force base(s)/installation(s) or other Department of Defense (DoD) installations?

<table>
<thead>
<tr>
<th>No relationship</th>
<th>Strong, cooperative working relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>6</td>
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<tr>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>9</td>
<td>10</td>
</tr>
</tbody>
</table>

**Q2.** In your opinion, how important is a cooperative relationship with the following:

<table>
<thead>
<tr>
<th>Not important</th>
<th>Extremely important</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>3</td>
<td>4</td>
</tr>
<tr>
<td>5</td>
<td>6</td>
</tr>
<tr>
<td>7</td>
<td>8</td>
</tr>
<tr>
<td>9</td>
<td>10</td>
</tr>
</tbody>
</table>
Q3.
Have you been involved in or received training on Tribal and base interactions/relations/consultation?

<table>
<thead>
<tr>
<th>Military Protocols</th>
<th>No training</th>
<th>Extensive, regular training</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Consultation Methods</td>
<td>●</td>
<td>●</td>
</tr>
<tr>
<td>Federal Law and Regulations</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

Q4. In your opinion, how important are tribal and base relations as they are perceived by the following:

<table>
<thead>
<tr>
<th>By Tribal Leaders</th>
<th>Low Importance</th>
<th>High Importance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>By Tribal CRM/NRM Staff</th>
<th>Low Importance</th>
<th>High Importance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>By Tribal Members</th>
<th>Low Importance</th>
<th>High Importance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>By Base/Installation Personnel</th>
<th>Low Importance</th>
<th>High Importance</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td></td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>

Q5. How much impact or influence does your Tribe have on U.S. Air Force lands and/or operations in the following areas:

<table>
<thead>
<tr>
<th>Cultural Resource Management</th>
<th>No Impact/Influence</th>
<th>Significant Impact/Influence</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Natural Resource Management</td>
<td>●</td>
<td>●</td>
</tr>
</tbody>
</table>
Q6. Do you feel that the local U.S. Air Force base(s) command acknowledges your Tribe’s inherent sovereignty?
Q7. Do local U.S. Air Force base(s) consult with your Tribe regarding culturally significant landscapes?

Q8. Who do you contact if you have a question regarding U.S. Air Force base relations/issues?

Q9. Please describe how often the local U.S. Air Force base(s) consults with your Tribe and what form those consultations take (i.e. letter, face-to-face meeting, telephone, email, etc.).
Q10. Do you feel that past consultation between your Tribe and the local U.S. Air Force base(s) was appropriate for your needs? Please describe why or why not.
Appendix D2: PDF VERSION OF DRAFT QUALTRICS ONLINE SURVEY TO BE SENT TO U.S. AIR FORCE REPRESENTATIVES

Study Title: US Army Corps of Engineers-UM Contract, Task Order 0002, Tribal Relations Training Package

Default Question Block

**Q1.** Do you feel your base/installation has a cooperative working relationship with any Tribe (local or non-local) or stakeholder group(s)?

<table>
<thead>
<tr>
<th></th>
<th>No relationship</th>
<th>Has a strong, cooperative working relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 2 3 4 5 6 7 8 9 10</td>
<td></td>
</tr>
<tr>
<td>Local Tribes</td>
<td>● ● ● ● ● ● ● ● ● ●</td>
<td></td>
</tr>
<tr>
<td>Non-local Tribes</td>
<td>● ● ● ● ● ● ● ● ● ●</td>
<td></td>
</tr>
<tr>
<td>Other Stakeholders</td>
<td>● ● ● ● ● ● ● ● ● ●</td>
<td></td>
</tr>
</tbody>
</table>

**Q2.** How important do you feel it is to have a cooperative relationship with Tribal governments or stakeholders?

<table>
<thead>
<tr>
<th></th>
<th>Not important</th>
<th>Extremely important</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>1 2 3 4 5 6 7 8 9 10</td>
<td></td>
</tr>
<tr>
<td>Local Tribes</td>
<td>● ● ● ● ● ● ● ● ● ●</td>
<td></td>
</tr>
<tr>
<td>Non-local Tribes</td>
<td>● ● ● ● ● ● ● ● ● ●</td>
<td></td>
</tr>
<tr>
<td>Other Stakeholders</td>
<td>● ● ● ● ● ● ● ● ● ●</td>
<td></td>
</tr>
</tbody>
</table>

**Q3.** How much training on tribal and base interactions/relations have you received?
### Q4. In your opinion, how are tribal and base relations perceived by the following base personnel:

<table>
<thead>
<tr>
<th></th>
<th>Low Importance</th>
<th>High Importance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Commanders</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Cultural/Natural</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Resource Management</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Staff</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>ITLOs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Public Affairs</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Base/Installation</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Personnel</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Q5. In your opinion, how are tribal and base relations perceived by the following Tribal individuals:

<table>
<thead>
<tr>
<th></th>
<th>Low Importance</th>
<th>High Importance</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Tribal Leaders</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Tribal</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Cultural/Natural</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Resource Management</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Staff</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Tribal Members</strong></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Q6. What is Tribal sovereignty?
Q7. Rank these three jurisdictions in order of authority (1=highest level of authority):

Tribal
Federal
State

Q8. Who do you contact if you have a question regarding Tribal relations/issues?

Q9. In your opinion, what effect does your base have on tribal interests?

Q10. Do you believe improved relations and increased training in tribal interactions is necessary and a positive thing for your base?
Questions or concerns about this survey can be directed to the project Principle Investigator, Dr. Kelly Dixon at kelly.dixon@mso.umt.edu
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