

RECONCILING THE SHORTCOMINGS OF THE NATIONAL PRESERVATION ACT TRIBAL
CONSULTATION MANDATE: CULTIVATING SPACE IN CONSULTATION PROTOCOL
ORIENTED TOWARDS TRIBAL SELF-DETERMINATION AT KATMAI NATIONAL PARK
AND PRESERVE

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Authorization to Submit Thesis

This thesis of Christina M. Phillips, submitted for the degree of Master of Arts with a Major in Anthropology and titled " RECONCILING THE SHORTCOMINGS OF THE NATIONAL PRESERVATION ACT TRIBAL CONSULTATION MANDATE: CULTIVATING SPACE IN CONSULTATION PROTOCOL ORIENTED TOWARDS TRIBAL SELF-DETERMINATION AT KATMAI NATIONAL PARK AND PRESERVE," has been reviewed in final form. Permission, as indicated by the signatures and dates below, is now granted to submit final copies to the College of Graduate Studies for approval.

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Abstract

This research treats recent cases at Katmai National Park and Preserve to review the effectiveness of tribal consultation. As mandated by Section 106 of the National Historic Preservation Act (NHPA), the federal government must consult with Indian tribes pursuant to fulfilling obligations directed in Executive Order 13175. Drawing upon experiences coordinating consultation and leading interviews, I demonstrate how federal agencies can develop a consultation model to reconcile the shortcomings of the NHPA. This research counters persistent failures to honor tribal self-determination by prioritizing the duty to consult in a meaningful way.

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Dedication

In memory of my dad and brother, who always challenged me to question the status quo and encouraged me to do my best.

Table of Contents

Authorization to Submit Thesis	ii
Abstract	iii
Acknowledgements	iv
Dedication	v
Table of Contents.....	vi
Chapter 1: Introduction.....	1
Literature Cited.....	12
Chapter 2: Methods	13
Literature Cited.....	32
Chapter 3: National Historic Preservation Act.....	34
Literature Cited.....	47
Chapter 4: Conclusion	48
Appendix A - Partnering with Elders Introductory Letter Template	52
Appendix B - Protocol and Best Practice for the Research on and Public Distribution of Information from Projects involving Indigenous Peoples Template	53

Chapter 1: Introduction

“We said, ‘We need to sit down together every year and look at each other across from one another. We need to eat together before you go into the Park.’ This is what started this tradition of having food with your staff.”

Taken from an interview with a local resident of Naknek, Alaska in 2016, the intended sentiment of this comment became clearer after learning more about Katmai National Park and Preserves’ park-community relations. Namely, community members’ concerns over park administration in the past minimizing their intrinsic interests in park lands, as many are descendants from villages within its boundaries, and a desire to have equal partnership in heritage preservation. I became educated to these conditions at Katmai and a trend commonly experienced by Native American tribes who share tribal lands within park boundaries. I never guessed sitting at that interview I would become so immersed, returning year after year, solidifying graduate research around these community concerns. What I knew at the time was my excitement over a position in a new place and very little about the day-to-day impact park presence could have in the local community.

I still remember May 5, 2016 and my feelings of fatigue and anxiety after travelling 4,000 miles from Georgia to Alaska in a span of twenty hours. In our final descent towards King Salmon, I was stirred awake to view for the first time, the Alaska Peninsula. I looked out the cabin of our eighteen-seater jet onto the landscape below. After pouring over John McPhee’s book, *Coming into the Country* (1976) and John Muir’s *Travels in Alaska* (1915), far-away feelings of what to expect came into view. Reverence is inspired every time I return to Alaska and a deep appreciation for not only the beauty it boasts, but more so for the past and living local history on the peninsula. In the beginning I was another first-time visitor to the state, seasonal staff that knew nothing of the local culture or cultural affiliations to sites within Katmai National Park and Preserve [hereinafter referred to as Katmai]. Working as a representative of the park service, an agency with a mission statement that prioritizes preservation efforts, I believed my position naturally aligned with community interests. I had, and continue to have, a lot to learn.

During my first year leading ethnohistoric interviews, it was the comments of community members that educated me to inequitable past treatment of their interests in park-community relations and policy. Hearing the concerns and frustrations that were shared regarding park policies towards Alaska Native tribes developed interest into legal processes related to Indigenous sovereignty. Although I knew there was a legacy of minimizing Native Americans’ intrinsic interests to cultural sites, I didn’t know the extent of neglect and the complex conditions that upheld it. A provision in the

National Historic Preservation Act (hereinafter referred to as NHPA or Preservation Act), Section 106, is intended to secure space for tribes to contribute to the planning and protection of both cultural and religious sites (Public Law 89-665, 54 U.S.C. 300101-307108). Section 106 procedures likewise dictate many of my responsibilities as an archaeologist at the park. The mandate in Section 106 that's supposed to facilitate security for tribal interests is a step that requires the federal government conduct tribal consultation (16 U.S.C. § 470f). The survey interview process in 2016 revealed, even considering federally mandated obligations, that there were persistent cases of Katmai failing to engage in meaningful consultation.

It was with these recognitions that my supervisor and Cultural Resource Program Manager, Linda Chisholm, found funding for a project that prioritizes improving relationships with Indigenous Peoples' affiliated with Katmai. The park funded project, "Partnering with Elders to Develop Cultural Resource Inventory, Assessment, and Preservation Goals" (hereinafter referred to as Partnering with Elders Project) was initiated in 2018. The Partnering with Elders Project's intended focus is developing a new consultation model and supporting new cultural preservation projects where communities are both directing and carrying out projects with the park. Leading this project at Katmai with the help of community members, tribal representatives, council members, tribal elders, and cultural resource staff at Katmai became the focus of my graduate thesis. In this thesis I attempt to show that it is worth reviewing Section 106 procedures in consultation at Katmai, and to a broader extent, National Parks.

Research for this thesis project was conducted in 4 months in 2018. While this was the time when outreach was specific to the Partnering with Elders Project objectives, I consider my 2016 and 2017 seasons were needed to develop important relationships and critical groundwork leading to 2018. For those reasons, conclusions presented in this thesis are derived from multiple years of working and living in the region, which includes; facilitating consultation, analyzing the park's administrative history of consultation, the analysis of recorded life histories of Katmai descendants, ethnohistoric interviews conducted in 2016, and a combination of 2018 participant observation and semi-structured interviews. The organization of this thesis includes three chapters that collectively draw information together.

In Chapter 2 I will discuss in greater detail the rationale for this research, a self-reflection on challenges I faced negotiating my role as a researcher, the outgrowth those challenges had in informing the theoretical framework and methods I adopted, as well as a narrative of events during 2018's project season. To understand the generation of how the project was conducted required chronicling how I responded to my own subjective experience in the research process and negotiations

I made to reduce the power I had in its outcomes. Permeating discussions in this chapter are overarching themes of colonial oppression. Indigenous communities continue to experience the vestiges of assimilation in both their cultural and legal positions. I felt these were critical conditions to begin to understand. There was, and continues to be, a growing discourse between understanding Indigenous research and decolonization. This has supported advancements in Indigenous community-based projects, some of which will be shared. The examples offered important takeaways moving into the Partnering with Elders Project.

In Chapter 3 I take an analytical approach and attempt to clarify complexities as they relate to the Preservation Act statutory framework and Section 106 review processes. My belief is that it is important to understand the legal framework, legal history, and court interpretations of the Preservation Act if I am to suggest the mandate for tribal consultation is ineffective. To accomplish this, examples from legal cases, administrative consultation records at Katmai, reactions recorded by tribal representatives, and snapshots from interviews conducted in 2018 will be collectively shared.

The final chapter will bring together overarching themes and a synthesis of this research, recommendations for reconciling shortcomings in consultation requirements, and proposals on ways Katmai will aim to engage more collaboratively moving into the future with our local communities. Perspectives presented in this final chapter will give value to the importance this work has in Katmai and could have at other parks. Running throughout this thesis is a critique of park-specific obligations. My goal will be to offer takeaways from closer examination of the existing challenges faced by parks honoring a trust relationship with Native American tribes. I do not wish to diminish important work conducted in parks to engage local communities and tribes because I know these efforts do exist. My intention is to illustrate that when looked at case by case, relationships are unique to park units, and there is reason to suggest guiding principles are inherently flawed.

Before these chapters, the remainder of Chapter 1 shares a snapshot of Katmai's geological, cultural, and historical context. This history started before the park's designation; explaining the transitions families experienced following its designation, as well as the significant impact this had, and continues to have, on Indigenous identities. Consultation is not the only focus of this thesis, but the lens I'm able to view praxis implemented by Katmai and how other Alaska Native tribes would perceive it within a broader context of government-to-government relations. To begin to approximate the impact the park's establishment has for communities, it's critical to share the significance of the area to the people themselves. It would be a disservice to distort their position by only sharing my experiences and interpretation of their history. Indigenous people enjoy a long history in Alaska and survived the colonization of Russian explorers, the land purchase of Alaska by the United States,

forbidding winters, natural disasters, epidemics, natural resource extraction, and changing relationships on their land as the state modernized. Drawing from interviews I conducted in 2016 for the “Savonoski Archeological and Ethnographic Survey,” historical accounts, and interviews conducted in 2018 for the “Partnering with Elders Project,” the following will attempt to demonstrate just how important the lands are within Katmai.

...

The combined Park and Preserve- 3,674,541 acres in Katmai National Park and another 418,699 acres in Katmai National Preserve- is located in the northern half of the Alaska Peninsula (Clemens & Norris 1999). The area boasts a diverse landscape owed to its rich geological formation. Once covered by glaciers, the last advance of the Late Glacial Maximum approximately 16,000 years ago established the characteristic lake systems, boreal forests, and tundra-covered lowlands seen there today (Fierstein & Hildreth 2003). Iconic regions of Katmai include the Naknek River drainage, which includes Naknek Lake and Lake Brooks, two lakes connected by the Brooks River in a formation that started over 10,000 years ago (Dumond, 2005, p.4). Halfway through the river’s course, it cascades six feet over a rock shelf that is known today as Brooks Falls. Outlying the Naknek drainage to the east are tightly spaced stratovolcanoes of Alaska’s Quaternary Chain and the site of a catastrophic event that covered a 40 square mile area with approximately 700 feet of ash (Clemens & Norris 1999). The impact of this single event drew the attention of people--geologists, botanists, and organized naturalists--outside of Alaska and initiated a series of events that led to the establishment of the area as a National Monument.

It was June 6, 1912 when the largest volcanic eruption of the 20th century occurred. The magnitude of Novarupta’s event expelled thirty times the mass than that of Mount Saint Helens, devastating communities, villages, wildlife habitats, and drastically changing the landscape in its vicinity (Clemens & Norris 1999). In 1916, the National Geographic Society (NGS) assembled an expedition team led by botanist Robert F. Griggs, to document the eruption and surviving vegetation (Clemens & Norris 1999). The site of this event was named *The Valley of Ten Thousand Smokes* for its thousands of fumaroles of steam escaping from beneath the ash-laden landscape (Griggs 1917). Griggs and his team spent several years (1915-17/19) documenting the Valley of Ten Thousand Smokes in an effort to protect it as a national park. President Woodrow Wilson designated the area as Katmai National Monument in September of 1918

...

The Katmai region enjoys wide public appreciation and appeal for its legislated Wilderness areas and as sanctuary for brown bears, however the human record of 9,000 years of habitation in the region is often overshadowed by popular demand for these “untrammeled” spaces and personalized bear encounters. Brooks Falls, where thousands of people travel to see brown bears today, looked much different 4,500 years ago. Familiar scenes along the river included people setting up fishing weirs, putting split salmon on drying racks, collecting berries, and finding shelter in semi-subterranean sod-covered houses (Dumond 2005). The Alaska Peninsula is traditionally a homeland to Alutiiq-Sugpiaq peoples (approximately 2500 BC to the historic period). The better part of modern archaeological research and best-documented records are concentrated within to the Brooks River corridor that is within the greater boundaries of Brooks River Archeological District National Historic Landmark (Dumond 2005; Partnow 2001).

Harsh terrain, forbidding winters, and volcanic eruptions that disrupted and at times, forcibly displaced people from their villages did not dissuade early nomadic hunters from returning to access and repopulate the area. In time, the tradition of seasonal migrations to camps began to develop into more permanent villages and homes along the Pacific Coast at places like Kaguyak-Douglas, Kukak, Amalik, and Katmai Bays, and the interior uplands of the Naknek Drainage (Dumond 2005) at Old Savonoski and Alinnak. Even in the decades following the Katmai-Novarupta eruption and establishment of the park as a bureaucratically managed and bounded unit, people could still be found returning to fish, hunt, trap, and gather as they always had (Ringsmuth, 2013, p.8).

...

The Valley of Ten Thousand Smokes and brown bears were winning the attention of public interest in the early 20th century (Ringsmuth 2013). Two hundred miles down the Peninsula, residents from coastal Katmai Village displaced from the eruption were trying to reestablish in the new village of Perryville. People were inspired to rebuild a replica of the Russian Orthodox Church buried at Katmai Village, a structure that can still be seen in Perryville today. People who fled other villages, such as Old Savonoski, eventually relocated further west to establish villages on either side of the Naknek River:

“They moved way down Naknek River on the south side to new villages. And it is Savonoski Village they called it. But it’s gone now. I think the church there has fallen apart. But I don’t know, I have not been there for years. There was one building standing and that was the Russian Church. But most of the old people are dead and younger generations moved into King Salmon and South Naknek” (Monsen 2016).

For the few families that became located more permanently around historic Naknek, a village located approximately 30 miles from the border of Katmai National Park, tragedy was felt only six years after the eruption during the Spanish Flu pandemic of 1919:

“I remember my dad and a gang were at the docks, the beach gang they called it. They dug trenches to put a whole bunch of people in one hole. There was a mission in Dillingham where a lot of kids that ended up over there. The ones that survived, I guess. But there were maybe four true native families in Naknek in one cluster really near the church” (Monsen 2016).

With fewer and fewer families, the continued expansion of the Monument in the first half of the 20th century, and the passage of the Alaska National Interest Lands Conservation Act (Public Law 94-487) in 1980 that expanded Katmai into a National Park and Preserve displaced local people even further. A reputation was building around Katmai and a foreboding feeling grew as change was predicted:

“We said in a public meeting one time that we didn’t want to go to the park, the park came to us. That was when they extended it again.” (O’Hara 2016).

The park’s 1980 expansion was protested by Alaska Natives, politicians, and residents who viewed the action would have detrimental impacts to their traditional use of the area, fears that later revealed to carry truth. Among many others, The Council of Katmai Descendants (CKD) established by Margie Macaully-Waite, Mary Jane Nielsen, and Nielsen’s brother Trefon Angasan Jr., were among those who opposed expansion to include the Brooks River. The Katmai Descendants were inspired by elder Pelagia Melgenak, grandmother of Mary Jane and matriarch of the family (Nielsen 2005). Pelagia Melgenak believed the Katmai descendants’ most important responsibility was preserving their ancestral lands (Nielsen 2005). In doing so, the CKD has fought to protect their rights and customs at traditional sites including the Brooks River, where *redfish*--spawn-phase sockeye salmon--have been harvested for thousands of years at the sheltered river outlet known locally as *Kittivik*. Trefon Angasan (as cited in Ringsmuth, 2013, p.173) made clear in a consultation meeting the significance of redfish to living descendants:

“Since the descendants could not resettle at the place of our forefathers, they returned under the dark of night to continue their sacred practice of harvesting, sensing that their ancestors were pleased with their continued practice of harvesting the redfish at the Brooks River. They felt that as long as they are able to continue this practice, they are not abandoned people”.

Considering the several displacement events of Novarupta's eruption in 1912 followed by the establishment of the Monument, Park, and Preserve, it is difficult to imagine the effects these events had and continues to have for local families. In response to a growing threat to the CKD, their mission to protect cultural sites is one of survival and transmission of heritage. In a 2018 interview with acting Executive Board Member, it was shared:

“The emphasis has always been on including the young people. Once you know your heritage and your ancestors, what they did and how they did things to survive and such, then they take pride in who they are. Alutiiq, Aleut. And this is what my grandparents did, and this is where I'm from. Once they have that knowledge, they are able to go ahead and help identify themselves” (Macaully-Waite 2018).

Few of today's generational youth have opportunities to visit ancestral sites. The responsibility of parents and grandparents is to share stories of these connections to these sites. Time spent in the community, people always spoke emphatically about their memories and experiences as children trapping beavers, catching redfish, putting fish up on drying racks at Brooks River, traveling by dogsled teams, hunting, and picking wild berries. Significantly for the people with memories of convening at Brooks River, old fish camps, and family trapping cabins, these are important places. Taking part in subsistence tasks supported families but was also a larger pattern of cultural persistence:

“We have a lot of time while we are splitting fish and freezing them. While you are doing that you have a lot of time to talk about things. And then sitting there at the campfire after cutting the moose and everything for dinner these stories would come out. Like you asked- where did these stories come from? Someone would share the story about the moose coming in three generations ago. We ate it and it was good. And so it was usually those type of things” (O'Hara 2016).

“We would just work together for a week or two and put up a bunch of fish for the dogs. It would not all dry but we would haul it back to Naknek all wet and then hung it up to dry. So one of us from our family had to go along to get our share of the fish. (*laughs*) But if we did that now we would get into trouble. If we did that and put a net across right below the falls and drift down to the village and pull the net in full of fish. It was about '45 the last time I went there for that” (Monsen 2016).

Clearly, this suggests a change in use of traditional subsistence sites as a result of park presence. Still, such stories also hint at an enduring association between community members and

Katmai lands. Subsistence hunting and fishing provides the opportunity to pass cultural and historical knowledge between generations today. Likewise, traditional sharing of subsistence is still practiced by community members of King Salmon and Naknek:

“Now when we catch these reds we take them home and dry them. We eat some of them within two days. Not all of them because they will be dry for winter time. You don’t smoke them, you just split them and hang them up to dry. Then you can take a hammer and make them softer. You can dip them in seal oil, Wesson oil, or butter. It’s probably not something that people would want not having grown up with this stuff” (O’Hara 2016).

“My gift for the elder was these red fish... You get them where they pale out. They are not all fat. They are almost like a chum salmon. You know, whiteish. That’s the ones we keep” (Aspelund 2018).

Allan Aspelund, who was the second eldest man in Naknek at the time of this interview, was one of the few that still returned every year to fish at Brooks River. He talked about taking younger men with him to instill the tradition:

“Right now, about two years ago, I had still some young boys I took up there and showed them how to do it. But now I said this generations changing, they aren’t gonna do it. Nobody is going up to do it. So two generations from now, all of a sudden, its gonna fall through the cracks if nobody does” (Aspelund 2018).

Significantly, this sentiment concerning next generations was shared by members of the CKD, Allan Aspelund, and many others.

“I feel that our people now are becoming so westernized. It’s good, it’s business. We are getting good dividend returns, yeah. But the traditions, heritage, and that sort of thing, there is a slippage there” (Aspelund 2018).

...

The presence of Katmai National Park has created economic opportunities for local residents of the Naknek drainage, including but not limited to, concession hunt guiding, fish guiding, and float plane operations. Even before the 1912 eruption, many local families transitioned into a cash economy born from the salmon packing-and-canning industry and the commercial fishery of Bristol Bay. Despite this transition, there is still heavy reliance on subsistence fishing that has been fought for and protected by Alaska’s Indigenous communities. The timeline for Alaska securing these rights follows a different storyline and trajectory than that of the contiguous states. The more recent cession of

Alaska to the United States from Russia in 1867 produced different outcomes for Indigenous people during western European expansion. Whereas for Native American tribes in the contiguous United States who signed treaties to protect tracts of land in the wake of Anglo-American expansionism, aboriginal land remained in title to Alaska Native tribes long after cession. This was largely the result of slow settlement and survey of the region.

It wasn't until Alaska was recognized for its natural resource extraction potential did aboriginal titles get challenged (Ringsmuth 2013). Titles to aboriginal land claims were extinguished in 1971 with the passage of the Alaska Native Claims Settlement Act (Public Law 92-203). While sovereignty and land tenure issues remained a point of conflict, Native rights to hunt, fish, and gather were not adequately dealt with in Alaska Native Claims Settlement Act (ANCSA). Clarifying access to customary subsistence sites that had not previously been addressed in ANCSA was answered in the 1980 Alaska National Interest Lands Conservation Act (Public Law 94-487). Alaska National Interest Lands Conservation Act (ANILCA) includes a statute that both protects and gives subsistence priority to rural residents to continue engaging in a subsistence way of life on federally owned land. This subsistence priority is the reason for the protection of fishing and hunting to Alaska Natives affiliated with Katmai within the Preserve (16 USC § 410hh-1).

For almost fifty years prior to the passage of ANCSA and ANILCA, families displaced from the eruption still enjoyed returning to customary hunting and fishing sites. Katmai lands were principally travelled by dogsled and by foot well into the historic period (Deur & Callaway, 2008, p.17).

“I was there before they even had this. That was before 1940 when they started building the lodge there. It was just our people going up there catching spawned out salmon” (Aspelund 2018).

Visitor infrastructure lagged decades behind the official establishment of the Monument in 1918, beginning in earnest after the establishment of a fly-in fishing lodge at Brooks River in 1950. Valuable source material from an NPS report illustrates how local families at this time continued to travel in cycle with the seasonality of resources; dog sleds were used in the winter for both hunting and trapping, whereas travel by foot and paddle boat was relied on for accessing fish camps in the summer (Deur & Callaway, 2008, p.18). A considerable amount of time was spent supporting the dog teams. People often spoke about harvesting spawned-out redfish at Brooks River in the fall and early winter:

“My mom and I would put up about 3,500 smoked salmon for the dogs in the wintertime” (O’Hara 2016).

“We always had a big dog team when I was growing up, two dog teams with about 15-20 dogs always. Right there where Brooks Camp is now is where we used to go up with a bunch of families. We would go up there to put up fish for the dogs every fall. It would be around August when the commercial fishing was done” (Monsen 2016).

“Gosh we were putting up 2,500 to 3,000 fish and dried them up for the dog team” (Aspelund 2018).

Accounts share how important these times were and how taking part in subsistence tasks supported the continued transmission of Indigenous identities. Following the construction of Brooks Lodge and increased presence of the park staff and visitors alike, impacts that had been predicted were now being felt. Local people began visiting the areas of Brooks River and Dumpling Mountain less and less. Allan Aspelund and his wife used to make visits out to Brooks Camp to camp and go berry picking in the summer months, but with more interactions with park visitors and rangers, they abandoned all high season visits. Accounts of this time imply a growing feeling of frustration and loss. An interaction with park staff once included a request they camp out of view from park visitors and refrain from building campfires, so as not to impede visitors’ views. These memories are not generally described in positive terms.

Between the years of 1931 and 1950, Katmai Monument was managed remotely from the administrative offices of Mount McKinley National Monument. Lacking funding for a ranger staff of any size, the NPS relied on Fish and Wildlife research staff living at Lake Brooks to serve as *ad hoc* park patrol (Clemens & Norris, 1998). Reports of illegal hunting, fishing, and trapping eventually gained public attention and the park was accused of abandoning its management responsibilities (Ringsmuth, 2013, p.6). In 1950, Ray Peterson was awarded a concession contract to provide fly-in, guided fishing trips—a recreational activity that had quickly developed popularity with the WWII servicemen at the Naknek Air Base. Brooks Camp, operated by Peterson and John Walatka as Northern Consolidated Air “Angler’s Paradise” began its construction, and a period followed where tensions were high between the Heirs of Pelagia Melgenak and park management. After ANCSA passed, twenty-five individuals applied for Native Allotments, including Pelagia Melgenak (Ringsmuth, 2013, p.166). None of the claims except Melgenak’s, were viewed to pose a conflict for the parks vision of operating Brooks Camp. The claim was for a parcel of approximately 120 acres that included land on both sides of the Brooks River, the epicenter of the developing Brooks Camp

recreation area (Ringsmuth, 2013, p.166). This claim, applied in 1971, adjudicated in 1983, and appealed by the park was fraught with conflict. The final decision was released in 1993 ruling NPS the uncontested owner of all land at Brooks Camp (Ringsmuth, 2013, p.166). Margie Macaulay-Waite issued a quick response to this ruling with an invitation to Regional Cultural Resources Manager and Park Superintendent to attend a consultation meeting with Bristol Bay area Native organization leaders (Ringsmuth, 2013, p.167). The meeting was intended to gather information for writing a Memorandum of Understanding (MOU) that addressed Native American Graves Protection and Repatriation Act (NAGPRA) responsibilities and protocol if inadvertent discoveries of human remains were found around Brooks. Unfortunately, the MOU was not signed. It wasn't until 2012, again with the help of Margie Macaulay-Waite, when the NAGPRA Memorandum of Agreement "Alaska Native Humans Remains and Associated Artifacts Encountered as a result of construction, maintenance and research within Katmai National Park and Preserve" was signed (Ringsmuth, 2013, p.167).

Following consultation in 1993, Park Superintendent Tim Cochrane, shared important recognition of Brooks River's cultural significance to descendants and that, "It is quite clear our management actions to date have foreclosed the recognition and response to that responsibility" (Ringsmuth, 2013, p.168). The first gathering of its kind, consultation in 1993 initiated critical reflection by park managers and positive progress towards establishing viable working relationships with local Alaska Native communities. Some positive outcomes included regular consultation with the newly organized Council of Katmai Descendants, the newly outlined Resource Management Plan in 1994, the development of Katmai's cultural resource program in 1996, and the hiring of professional archaeologists to focus attention on the compliance needs at Brooks Camp. The consultation process was critical for developing these outcomes and supports the importance this process has for ensuring federal agencies honors their government-to-government relationship with Alaska Native groups.

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Chapter 2: Methods

In 2016 I began attending community meetings, potlucks, festivals, and workshops in the communities of the Naknek River drainage. In these spaces I developed relationships with community members and was honored with invitations to listen to family histories and stories, including with those I introduced in Chapter 1. In these spaces, whether included directly or not, time spent, and knowledge shared led me to understand individual, household, and park-community dynamics. They opened my eyes to the day-to-day impact of the park and the historical and cultural significance of sites like Brooks River. In these spaces, fears for their children and grandchildren who didn't have the same memories of harvesting red fish at Brooks River figured prominently in their minds. Community members and elders identified a critical need to develop projects aimed at cultural preservation for next generations. And in these spaces, I listened and learned about their concerns. These spaces were(are) critical. I never generated relationships when I relied on the method outlined in the Preservation Act for initiating consultation that led with a letter.

Introduced in Chapter 1, the National Park Service as a federal agency is required to consult with Native American tribes on land culturally or religiously significant, pursuant to Section 106 of the National Historic Preservation Act (NHPA) of 1966 (16 U.S.C. § 470f). Katmai's administrative records showed it wasn't until 1994 when the park operations were brought more fully into compliance with Section 106 (Ringsmuth 2013). Between the years 2016-2018 facilitating consultation for the park, I noticed efforts had different levels of success. I recognized an inconsistency in the response rate to consultation. The question was raised in my mind whether this remained the responsibility of the park or if the Preservation Acts mandates failed to promote 'meaningful consultation.' An added complexity at Katmai resulted from a significant breach of trust that took place in October 2014 when an unplanned road was constructed across archeological habitation features at Lake Brooks. A Damage Assessment completed in 2017 by a forensic archeological contractor found construction of the road was completed without reviews under Section 106 of the NHPA and National Environment Protection Act, and in violation of the Archeological Resources Protection Act (Damage Assessment for official use only). The conditions that led to this violation are negligent, but I also believe them to be symptomatic of systemic problems that make tribal engagement through consultation ineffective.

Looking specifically at Katmai, the cultural resource program is currently involved in multiple projects that have goals of strengthening collaboration with Alaska Native tribes and local communities. The success of initiating consultation and responses to cultural program project invitations haven't had the results we expected based on initial public interest. To begin to understand

the complexity of conditions that impact responses required a lot of attention. Where I focused attention in the beginning was at seasons in 2016 and 2017 when I began systematically recording consultation initiated by Katmai. To test whether consultation was part of the problem, I looked back at responses to these requests.

Following the October 2014 case and an investigation into Katmai's responsibility, Section 106 consultation was prioritized at the park. A 'Summer Projects Letter' was written to include information about park operations from every division, including cultural resources, natural resources, and facilities management. Each division is responsible for writing a short summary of all project undertakings that elicit review. Project descriptions and/or project updates for each fiscal year are drafted together into the 'Summer Projects Letter' and sent to all federally-recognized tribes, Alaska Native Claims Settlement Act village and regional corporations, and Alaska Native descendant organizations with affiliation to pre-1912 Katmai villages. With consultation as a priority, in 2016 I began following up with each recipient by phone to ask if they had received the park's letter, if further clarification was needed, whether consultation was requested, and to introduce myself. I developed a standard operating procedure for recording correspondence and did so again in 2017. As I stated earlier, the response rates based on public interest were astonishingly low. During both years, no questions were raised by any group outside of the Council of Katmai Descendants, and no consultation was requested. I didn't believe this was the result of disinterest in park projects and was reluctant to believe no response meant consent. Linda Chisholm agreed, we hypothesized this resulted from an absent relationship between the park and these groups and didn't think a letter of this nature built, encouraged, or guaranteed a relationship. We recognized more attention was needed and the format of consultation in question could be adding to limitations.

Relationships had already been established with many of our local descendant organizations including the Council of Katmai Descendants (CKD), the King Salmon Tribe, the Heirs of Pelagia Melgenak, Native Village of Port Heiden, South Naknek Village Council, and both the Bristol Bay Native Corporation and Bristol Bay Native Association. For many of the other Native Villages and Village Councils, communication had been limited to receiving the 'Summer Projects Letter'. This absence was a fact recognized not only by the park, but also by CKD representative Margie Macaulay-Waite who in our 2018 interview shared, "We have mainly focused around Naknek, South Naknek, and King Salmon. And I think that was because of the close proximity and funding, you know". This was all true. Because the park did not have close relationships with other affiliated groups, we didn't know what their interests in cultural preservation projects were. It was imperative that Katmai extend outreach to these areas and gauge interest in ethnohistoric, language revitalization, archiving place

names, and archaeological projects. The task of accomplishing this in a respectful and inclusive manner became more and more expansive, a task I didn't know how to approach.

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Concerns I had moving into this work eventually began to outweigh my excitement before I returned to Katmai in May 2018. I was encouraged by my advisor and committee to practice self-reflection about my role in the work I was about to do. Although as an undergraduate cultural anthropology student who already participated in research, I spent little time thinking about my position and influence in research. It was an uncomfortable practice and I was challenged further while taking a graduate course the spring before leaving entitled, *Decolonizing Methodologies*. As a white woman pursuing a graduate degree in the field of anthropology, working for a federal agency, engaging with Indigenous communities, and having the position label as an archaeologist, I was suddenly aware of the baggage I carried. My titles, identification, and the historical legacy of anthropologists researching Indigenous people carries significant vestiges of colonial oppression. I reflected how the expression of colonialism benefited my status as a privileged white woman, granting me access to tools that uniquely positioned me-with a noted level of ease-to enter an institution of higher education. First in my family to pursue a master's degree, I was emphatically supported. There was a perceived value in seeking a higher degree that conveyed both power and prestige.

Reflexivity was uncomfortable and I experienced moments where I questioned if I should be engaging in research at all. It was critical for me to become accustomed to this exercise and I began practicing it frequently. Whether I liked to believe it or not, my subjective experience and privileged status influenced the research process and the participants of research I engaged with. Kovach (2012) discusses the importance reflexivity has in Indigenous centered research and qualitative inquiry, noting its centrality in creating knowledge. Taking the discussion of reflexivity further, Linda Smith (1999) illuminates engaging in this process being critical to decolonizing methodologies. This approach demands the acknowledgment of politics within Indigenous research. Especially as a non-Indigenous researcher, I need(ed) to heed special caution.

This all owed to my anxiety. Pouring over literature focused on Indigenous methodologies, pedagogies, and critical race theory, I was struggling to imagine how to proceed. I began to feel reluctant about using the word 'research' after reading the often-quoted statement by Linda Smith (1999), "the word itself, 'research', is probably one of the dirtiest words in the Indigenous worlds vocabulary" (p.1). Just as I questioned how much I knew about park-community concerns and how to approximate the impact a park unit had for Native Americans, I questioned the imperative of research.

Just as my position as a park employee didn't naturally align me with the interests of the community, the notion I might be unquestioned and welcome as a researcher was flawed too. Tuck and Yang (2014) poignantly state in their article *R-Words: Refusing Research*:

“As social science researchers, we are trained to believe that *research is useful* (even if only vaguely useful) and that it can compel needed change (even if the theory of change is somewhat fuzzy or flawed). Indeed, the hidden theory of change in the metanarrative of social science research is that research itself *leads to change*. This is the hidden curriculum of social science: that the researched need change and that *social science will compel it*” (p.236).

Where did this leave me? This left me thinking I was no more positioned to be doing research because I was accepted into graduate school and I did not have a place in this community. I confronted the question whether I belonged in this space and if I had the right to access it. If I left it at that, there would be nothing to follow in this thesis as the obvious answer to both questions is, no. I knew(know) the weight my privileged position carried and to proceed forward meant I needed to ask permission and reorient my position to redress power ascribed to me. To do that, I understood better than before the imperative of respect, reciprocity, and relationality that Linda Smith (1999) emphasizes in decolonizing perspectives. These tenets are mirrored, perhaps using different terms, when guiding principles in Indigenous research are shared (Grande 2015; Kovach 2012; Smith 1999; Frey 2017). What I took(take) forward are the following guiding principles to ensure a community driven project is emphasized: permission, partnership, perspective, praxis, and reciprocity. I experienced both successes and pitfalls in my attempt to emphasize these tenets and I will discuss the Partnering with Elders Project that was generated in 2018.

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Introducing any work with Indigenous communities into this academic discourse--my master's thesis--must ethically include the impact colonial relationships historically had and continue to have. Its impact is not only expressed at an interpersonal scale, such as my privileged position, its impact reaches a greater societal scale. Dominant society, and by extension, dominant agencies of society, are all expressions of the colonial legacy. The task of reviewing its impact at this scale is a much greater task. Just as reflexivity was an agent for me to critically examine my colonial expression, I found important abstractions can be made from Tribal Critical Race Theory (TribalCrit) that acts as an agent for reflexivity at a larger scale (Brayboy 2005). To begin to understand the unique cultural and legal position Native Americans occupy as a result of colonialism required reviewing not only literature specific to decolonizing perspectives, but TribalCrit as well. Altogether, TribalCrit and decolonizing

perspectives helped me envision a tribal-based approach to research that also emphasized the guiding principles that aid community-based projects.

To begin, I believe it's important to frame the racial backdrop and legal position secured for Native American tribes that started during colonization and is reinforced today. I direct attention first to the following epigraph that contextualizes the motivation for this assertion:

“White society's contemporary public discursive practices seek to constrain tribalism's self-determining rights, including the modern Supreme Court's discourse of implied limitations on tribal sovereignty. I suggest that these modern public discourses seek to confine and even to eliminate tribalism in the West today by use of central themes and thematic devices of the same racist, narrative tradition of the Indian's cultural inferiority that informed the Removal era's dominant legal discourse of opposition to tribal sovereignty. This still-vital narrative tradition of *tribalism's incompatibility with the supposed superior values of the dominant society* is, I argue, part of the *broader legacy of European-derived colonialism and racism reflected throughout modern federal Indian law and discursive practice*” (Williams, 1989, p.238).

In this epigraph, Robert Williams brings attention to issues born out of dominant modes of colonial oppression that still challenge tribal self-determination and sovereignty. This tradition of dominant legal discourse that opposes tribal sovereignty along with themes of European-derived hegemony reveal deeply embedded suppositions about racism. It posed a great challenge for tribes in the past and continues to today. Growing bodies of literature highlight the importance of entering dialogue with the theoretical traditions that maintain these discursive processes in legal discourse, i.e. Critical Legal Studies and Critical Race Theory (Delgado & Stefancic 2017; Solórzano & Bernal 2001a; Solórzano & Bernal 2001b). Two scholars, Solórzano and Yosso (2001b), contend that Critical Legal Studies (CLS) as a legal scholarship began to emphasize a critique of discursive legal traditions. This was recognized as an important development but was met with criticism because it didn't offer strategies that interrupted liberal legal traditions (Solórzano & Yosso 2001b). This scholarship in CLS became a departure point where other scholars began to offer responses and potential strategies. Among them were scholars who believed explicit and implicit challenges in legal traditions were born from racism (Delgado & Stefancic 2017).

The outgrowth of CLS that offered strategies for analyzing racial injustices came to fruition in Critical Race Theory (Delgado & Stefancic 2017). In the 1970s, Critical Race Theory (CRT) sprang up at a stage when a movement intended to redress racial injustice had all but stalled (Delgado &

Stefancic 2017). Subordination, oppression, discursive traditions, and legal injustices were all topics of critical examination. As premised in the epigraph above, Williams (1989) suggested the United States' race-related discourses in law were not examined using a theoretical lens, to which CRT provided a response. As a theoretical framework, CRT was a strong advocate for change. It examined the tradition of law that upholds division across racial lines. It challenged notions that racial emancipatory goals and social justice cannot be achieved with this guiding law practice. Solely relying on CRT as a framework in critical Indigenous studies becomes, however, problematic. An element that concerns Indigenous scholars about CRT is its alignment with racial binaries (Brayboy 2005). Although emancipatory, CRT does not consider the important impact that colonialism has towards American Indians today.

As a theoretical framework, TribalCrit acknowledges the unique legal and political position that Native people occupy, stating, "TribalCrit emphasizes that colonization is endemic in society while also acknowledging the role played by racism" (Brayboy, 2005, p.430). Brayboy's inclusion of colonization assuming a role in sculpting this unique position was an important advancement for Native peoples. It responded to the unique historical traditions that extended oppressive and assimilatory practices on tribal communities into sites of struggle. An especially important characteristic recognized in TribalCrit, were the restraints towards tribal self-determination and sovereignty. I assert that theoretical abstractions taken from TribalCrit can work to expose contradictions in the very manner that exchanges, and communication follow with Native communities. Applying this idea to Federal Indian Law and policy doesn't seem to be an overextension of its application. In fact, one of the nine tenets Brayboy (2005) discusses includes, "Governmental policies and educational policies toward Indigenous peoples are intimately linked around the problematic goal of assimilation" (p.429). The issues and concerns in tribal consultation are particularly salient regarding governmental policies. Historically central themes and thematic devices of racist narrative traditions in legal discourse, civil procedures, and Federal Indian Law have the insidious effect of constraining tribal self-determination (Williams 1989). Meaningful connections can be drawn from these central themes to the development, manner, and procedure consultation processes that follow with tribes.

I found it challenging to discuss the confrontations in tribal consultation that seem less sinister regarding self-determination versus obvious legal oppositions in landmark Federal Indian Law cases. However, in Chapter 3 where I analyze Section 106 review and the National Historic Preservation Act, I found legal language that assumes barriers and concerns as it relates to tribal sovereignty. Moreover, intersections can be drawn between the topics when they are viewed as a localized extension of

historically racist and discursive pasts that traditionally privilege whites, western ideals, colonial hierarchies, and oppressive processes. Assumptions have been constructed that western/colonial frameworks are the final arbiter and best suited to inform solutions to problems. For the National Park Service, this translates to mean federal entities are leading how best to engage in meaningful consultation. Exchanges that go seemingly unquestioned, but as Williams (1989) pointed out, have significant implications to Native peoples. Despite unquestionably positive advancements in Federal Indian Law, I assert that associated theoretical, methodological approaches, and assumptions that characterize western/colonial framing impact the effectiveness of tribal consultation. Although consultation was developed to secure a space for tribal collaboration and ensure federal agencies remain accountable to tribes, responsibilities are still characterized by agencies and not tribes themselves.

Policies were, and arguably still are, understood from a western standpoint that are thought to be for the benefit of Native Americans (Williams 1989). The underlying contradiction of this idea elevates western ideas and models. Brayboy (2005) is stated as saying, “Even though our status as a legal/political group has been repeatedly articulated in government policy, legal code, and the everyday lives of American Indian individuals and communities, it remains a point of debate and contention in most popular settings” (p.433). This shares how TribalCrit reveals expressions of colonial oppression in the dominant society and institutions. It also does well to share how Indigenous-centered framework can be applied in this context to overcome barriers created in these spaces.

...

There does exist, and developing now, competing critical pedagogies that accentuate critical Indigenous research and decolonizing methodologies (Barnhardt & Kawagley 2005; Grande 2015; Kovach 2012; Smith 1999). Indigenous scholar, Linda Smith (1999), describes decolonizing research as a process that critically engages imperialism, colonialism, and postcolonial ideas into Indigenous research. Just as TribalCrit casts a critical eye on the legacies of these traditions, Smith’s decolonizing perspectives respond to dialectic methods born from those very traditions. Guiding research and adopting methodologies that act in response to those traditions are necessary acts of resilience against the colonial conventions, i.e. institutions of higher education (Smith 1999). Research governed by western-based policies and models seem less sinister because of the backdrop in institutions of education that bolster its pursuit. In legal discourse, the same can be said when Section 106 review is bolstered by its pursuit in preserving cultural history. In both cases, western-based approaches that often value literacy are assumed and likewise challenged in decolonizing perspectives.

These ideas are translated to review Indigenous research and suggest models that aren't oppressive towards Indigenous communities, and where I recognize some of the guiding principles: permission, partnership, perspective, praxis, and reciprocity. What is arguably more important than following assumptions in western-centered research is emphasized by Smith's (1999) suggestions that included an emphasis on critical pedagogies, Indigenous epistemologies, methodologies, and paradigms. Research interests are therefore shaped by Indigenous agendas that elevate praxis valued by Indigenous people. This develops partnerships and reciprocity as an outcome and elevates space for collaboration. Thus, all the conditions I had hoped to emulate in the Partnering with Elders Project.

Responses by other Indigenous scholars to Smith's (1999) ideas highlight similar dilemmas that stem from an incongruous fit between western-centered research and Indigenous models. Recent research developed by Indigenous scholars Barnhardt and Kawagley (2005) with Alaska Native students share how adopting these ideas can create more meaningful outcomes. Barnhardt and Kawagley (2005) share the interests Smith (1999) believed needed to be the agenda of Indigenous research, including; emphasizing locally situated knowledge and Indigenous models, noting the importance of regional-research based initiatives, and constructing spaces safe for emancipatory agendas.

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An example I took from Barnhardt and Kawagley (2005) focused on how they utilized traditional knowledge to respond to discomfort reported by Indigenous students in rural Alaska. In their example, traditional knowledge was used to develop a sustainable infrastructure in schools that filled the ethical gaps in Eurocentric education, research, and scholarship. Over a period of 10 years, these initiatives served to strengthen the quality of educational experiences and consistently improved the academic performance of students (Barnhardt & Kawagley 2005). Discomfort Indigenous students reported was not unlike the discomfort tribal representatives experienced in consultation meetings discussed in an essay by Alexa Roberts, *Tribal Consultation in the National Park Service* (Swidler et al., 1997, p.231). Responding to that discomfort, Barnhardt and Kawagley (2005) in their own work adopted two previously disparate knowledge systems, western and Indigenous knowledge, and joined them to form a more comprehensive holistic system. The outcome of this synergistic system in schools promoted a culturally responsive curriculum and comfortable space for their students.

The improvements that Kawagley and Barnhardt (2005) outline have powerful implications to consider for tribal consultation. Their case demonstrated that working through a topic with multiple knowledge systems served to enrich perspective, what I believe is a missing feature in present day

consultation and relationship building. In order to adopt this concept in consultation, I believe there needs to be greater acknowledgement and adoption of Indigenous knowledge and ways of doing into our models. Indigenous knowledge is often conceptualized into a way of doing, it isn't itself static but expressed oftentimes through action. Much like knowledge of traditions that are shared at Brooks River, it is the action of harvesting that conveys this knowledge. Models in consultation will be more beneficial for the community when it's informed by already familiar systems and processes used by the tribe. If methods in consultation are likewise guided by the tribes instead of agencies, I believe more meaningful and thoughtful dialog will develop.

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Outlining specific methods to emphasize a tribal-based approach with all these thoughts in mind became messier and messier. I decided to leave the question of how to develop a community-based project aside until I arrived in Alaska. This was not an abandonment and attempt to skirt the important task of sharing how I was going to conduct research with my committee, but an intentional gesture to give up a level of power and control. I believed the best way to honestly promote a community-based research project relied on a level of "refusal" (Tuck & Yang 2014). What I refused to do was work in a vacuum where I dictated, before anything began, the generation of the Partnering with Elders Project. Instead, I planned to ask what vision and outcomes were desired by our local communities when I arrived in Alaska. Where I understood I needed to place my focus to achieve a community-based project began with receiving *permission*, acknowledging tribal sovereignty and self-determination; emphasizing a *partnership* that was predicated on a collaborative relationship; acknowledging *perspective* and the value of Indigenous knowledge/ways of doing; and ensuring *reciprocity* was an outcome of our work. An outcome viewed by the park was improving relationships along with our cultural preservation program. We did not know what the community wanted and how we could "give back". This was an important question to ask, and reciprocity in this case needed to honestly reflect not our own desires, but the desires of the community.

Moving forward, I assert redressing problems that threaten tribal participation begins by talking to tribes themselves. I understand, and believe most would agree, relationships can be hard to develop when letters alone are exchanged. I contend that too much value is placed on it. If we can convey this in a model that includes the value our letter prescribes in literacy and acknowledge Indigenous values, that would be a start. The letter does not need to be diminished or altogether abandoned, but just as Barnhardt and Kawagley (2005) found a holistic approach to valuing both western and Indigenous ways of doing, the same can be elevated in a consultation model. Linda Smith (1999) is stated saying that "Oral traditions remain a most important way of developing trust, sharing

information, strategies, advice, contacts, and ideas” (p.15). I found meaningful dialog came when the format emphasized orality and face-to-face interactions. Even more, I recognized when I was invited to people’s homes and community center events, there was a measure of comfort. When control over spaces was led by the individual, not only did they feel more comfortable not being forced to follow procedures prescribed in formal meetings, but I was more comfortable, too. With these thoughts in mind, I was ready to board my plane and travel back to Alaska.

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This project was conducted in 4 months, dating from mid-May 2018 to mid-September 2018. During this time, I sent a letter of introduction to fifty-seven recipients, followed up with each recipient by phone and email, had meetings with two Village Board Councils through conference calls, traveled to Anchorage for ten days, the village of Perryville for six days, and had meetings (recorded and unrecorded) with five individuals. I spent the majority of my time corresponding, recording responses, updating contact list information to reflect current tribal representative titles, names, addresses and phone numbers, re-sending letters, recording follow-ups, planning outreach in the community, planning travel for my two visits outside of King Salmon, and making a beautiful spreadsheet with all this information that nobody will ever have an interest in seeing. In the end, the time I personally spent with people paled in comparison to how much time I spent on the phone and computer. I had this expectation at the beginning, knowing my time was going to be spent laying groundwork for the project. The reality was that outreach of this scale had never been done at the park, where work in the past focused on immediate communities of Naknek and King Salmon.

The ‘Summer Projects Letter’ for 2018 was drafted to be sent at the end of May when myself and our archeological staff were in the field. We returned at the end of June, and due to complications experienced by park staff stationed in the backcountry, personnel had their attention focused on supporting them and the letter was not sent. Our intention having the ‘Summer Projects Letter’ sent in May was to share prior notification of the Partnering with Elders projects. The plan to have the ‘Summer Projects Letter’ received first, followed by a letter of introduction sent from me, was intended to support more interest. This lead was not critical to the project, and in fact, without prior notice the outcome was truer to replicating the conditions for project notification to our communities. I considered it later as a marker that ensured notification followed the traditional timeline for Katmai’s communication. ‘Summer Project Letters’ sent in 2016 and 2017 were sent in July without prior notification from project leads, and now the same was true for me.

The letter I drafted was edited to reflect this change and included introductory language for the project (Appendix A). Linda Chisholm and I decided the format was to follow an informal approach, with focus on introducing myself, sharing aspects of my background, upbringing, and professional experience. Learning from Indigenous scholars and mentors, I believed this introduction was a natural entry point (Smith 2012; Grande 2015; Frey 2017; Kovach 2009). The letter followed with a brief description about the Partnering with Elders project, and an open request for participation. In this description, I intentionally wanted to avoid prescribing any guidelines or outcomes for the project, keeping space open for interpretation for each letter recipient. This was difficult to accomplish and looking back I believe I would edit what I wrote to be clearer about that aim. Nonetheless, this letter of introduction was sent on July 6, 2018 to fifty-seven recipients that represented federally-recognized tribes, Alaska Native Claims Settlement Act village and regional corporations, as well as local and descendant community members. In addition to recipients who regularly received the “Summer Projects Letter”, individuals recognized as elders and important descendants of Katmai were also included.

I feared the trend of a near zero-success rate in 2016 and 2017 was going to repeat itself. I understood I was taking a risk replicating the practice of sending a letter in July. The purpose of this method was to imitate the same protocol Katmai used for initiating consultation on other projects. My presumption was when I initiated follow-up communication about our project and asked questions about consultation letters, underlying issues in previous communication might be revealed, such as my suspicion that timing of letters in 2016 and 2017 was not appropriate, the volume of information led to audience fatigue, and the medium for sharing notification in a letter was ineffective for engaging with communities.

Not wanting our project to be a failure, I needed to have some control over differences in what information was being conveyed. The greatest difference between our ‘Summer Projects Letter’ and the letter I sent was in the volume of information. Our Partnering with Elders project was one page, whereas most of the ‘Summer Project Letters’ might be upwards of five or more. Another control was in the language, where I specifically used ‘consultation’, that was normally emphasized only at the end of the ‘Summer Projects Letter’. For most of the project descriptions in the ‘Summer Projects Letter’, they appeared to be finite and were followed with a statement that shared if there is an interest in learning more to contact the project lead. In my view, this did not open lines of communication for consulting on projects, but rather closed it for inquiry alone. If information is requested, it is the responsibility of the individual to contact the project lead to learn more and an invitation would not be

plainly requesting collaboration or consultation on specific matters. In this respect I am explicit that collaboration on the Partnering with Elders Project is the goal.

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What I share in the next three paragraphs includes a wealth of painstaking information, the less glamorous side of any work. The purpose for sharing this process is to convey the often-static nature of this stage in research. Necessary for two reasons, it ensures I have recorded the work that is being funded by federal dollars, but more importantly it shows the value of later stages where I am no longer behind the computer fixated on recording the responses to the letter. There are important takeaways that came from this process, but it paled in comparison to what I learned when I was spending time with people. The process of recording went as follows: Three follow-ups came after the initial letter; 1) a follow-up call to all letter recipients, 2) a follow up email sent with the same introductory letter attached, and 3) a third follow-up with individuals who expressed interest. On July 31, 2018, I started calling each of the fifty-seven letter recipients. I spoke with twenty-six people over the phone and of the twenty-one calls that were not successful, thirteen were either numbers out of service or had full voicemail inboxes. Of the people I spoke with, seven of the tribal Chiefs and/or Presidents were out of the office for commercial fishing season. Seven individuals I spoke to shared that my letter was being included at upcoming board and/or council meetings. Fourteen stated they didn't receive or didn't recall receiving letters and followed with a request to email a copy. During a phone call, if I did not speak to someone personally, was unable to leave a voicemail, or another copy of the letter was requested, in all cases I sent an email. Of the emails I sent, I received eight responses. In summary, there was a 50% success rate reaching people through phone calls during initial follow-up, and five expressed positive interest in participating or learning more.

During my second follow-up for those I initially left voicemails, calls were initiated during the second week of August when I presumed commercial fishermen would return. In cases where I was still unable to make contact, I made note to resolve whatever problem was owing to this failure. By the end of my season, I confirmed correct correspondence for all but three Native Villages where I was never successful in making direct communication. Where people initially responded that council members were not in session or out fishing, I sent an email and followed up with another phone call during the second and third week of August.

In cases where interest in participating was expressed, I maintained ongoing communication throughout the month of August and September. These conversations led to invitations to council meeting conference calls, travelling to Anchorage, Naknek, and the village of Perryville. Although

these were cases where there was success planning the next phase for the project's outreach, I consider correspondence over the phone and through email measured success as well. In 2016 and 2017 I only had the one opportunity during follow-ups to speak with people. During August, I was regularly responding with over twenty groups or individuals. Even where interest was not expressed, I shared updates about ongoing projects and had more informal conversations with people.

An outcome of speaking with people I didn't expect was the number of requests I got to send a copy of the letter through email. At the beginning of the year, I assumed the best invitation for communication was going to be through mailed letters and phone calls. Postal mail can be variable at times where mail delivery to small villages relies on small regional air carriers or bush flights that can be delayed up to a week by inclement weather. Even still, I recall comments made over the phone in 2016 and 2017 that hinted that internet was oftentimes more unreliable. Although business and government traditionally rely on email for communication today, I didn't believe this was going to be the best strategy in Alaska. Many villages are in remote areas of Alaska where the internet can go out for extended periods. Even in King Salmon, an arguably bigger town than most villages, losing the internet is common. Not only that, the broadband power is snail pace compared to other places in the United States. Both conditions owe to the complexity and challenges of communicating across space in rural Alaska. It seemed, based on requests in 2018 to rely on email, that conditions were beginning to change for certain communities I needed to take into consideration. With the responses I received, I quickly adopted email for communication. During later phone calls and emails I specifically asked which medium of communication was preferred and noted responses.

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To my great pleasure, tribal representatives viewed the project as timely and needed. I continued to respond to leads where interests in participating were expressed throughout the month of August and had meetings with two Village Board Councils through conference calls, travelled to Naknek for a day, Anchorage for ten days, the village of Perryville for six days, and had meetings (recorded and unrecorded) with five individuals. Oftentimes, I was asked what level of participation was expected or what kinds of projects the park had in mind. In these cases, through email or over the phone, I answered that levels of participation and ideas for projects included whatever the community envisioned. I remember one response where surprise was expressed and followed with an explanation; they initially believed I was trying to "get something from them". I was happy to have the chance to respond and ensure it was known that Katmai was gauging interest and the desire was for the Partnering with Elders project to be community driven. This began opening lines of continued communication, and suggestions started to arise with invitations to visit respective villages.

In three cases, there was positive interest in having me visit respective villages, but they were for one reason or another implausible to do before my season with the park ended. In total, meetings were coordinated with five people, ranging from locations in Talkeetna, Anchorage, Wasilla, Naknek, and Perryville. Each meeting/interview occurred in different settings and on different scales. Individuals represented different groups that included the Council of Katmai Descendants, the Native Village of Perryville, Bristol Bay Native Corporation, the Native Village of Kanatak, and the community of Naknek. The request to have interviews recorded was asked of each interviewee. For the three interviewees who requested no recording, they indicated they didn't feel they had much to share and those meetings were on average shorter. Although I outlined questions to prompt responses related to consultation, in all cases discussions followed an informal and semi structured format. I did my best to follow the lead of interviewees and where it seemed natural and appropriate, ask previously outlined questions. Many of the questions were geared to uncover impressions and opinions about Katmai's consultation efforts, including:

1. What approaches in consultation appear to be working well?
2. What areas can be targeted for improvements?
3. What methods and settings do you recommend can be adopted in future consultation exchanges that will encourage greater participation? Email, phone, letter?
4. Is there a preferred time when notification and project descriptions should be sent?
5. Are there certain projects or park operations you want to be notified about? i.e. Cultural resource projects, maintenance projects, natural resource projects.
6. Are there areas within Katmai that are of interest to you? Do you prefer notification when these areas have potential to be impacted by projects?

Responses to impressions about consultation will be covered in greater detail in Chapter 3 where Section 106 review and consultation procedures are analyzed. The remainder of this Chapter will focus on themes that came from trips to Anchorage, the Native Village of Perryville, and Naknek. As well, I will share how I ensured I followed the guiding principles I outlined. Specific at this stage was receiving permission, emphasizing that perspective was being acknowledged, and that the partnership was accentuated throughout meetings.

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At the beginning stages of interviews, after signing a consent form, I was often asked what was going to be written about. In responses to these questions, I explicitly stated no sensitive information was being asked and any information that was included in my master's thesis would be

confined to impressions and experiences related to consultation. Any of the topics we discussed that related to preservation projects was not going to be disclosed outside of the cultural resources division discussions. After I discussed that the outcome for relaying this information was aimed at emphasizing the importance of meaningful consultation, there was consensus that consultation had room for improvement.

Because most meetings included conversations that related to other topics and some were recorded, I asked permission to continue corresponding with them while I wrote my thesis. I predicted cases would come up where I would confront questions about our discussions. I didn't want to convey any impressions incorrectly, and as an extra safeguard I wanted to ensure that I had received their approval during the writing process. This proved to be a challenge while I wrote my thesis. With over 2,500 miles that separated me from Alaska when I was back in Idaho, it was difficult to maintain communication through email or phone calls. This highlighted the challenges that are faced when contact outside of personal interactions are relied upon. Emailing and phone calls began to feel like barriers, and I wished I had funded trips to visit the same people with a thesis in hand. Without this ability, I kept what we outlined was originally consented to and hope that what I have shared is true and honest.

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As I previously stated, although I spent time outside of meetings with the community and individuals, these moments are not included in this thesis. Because consent wasn't given to do "research" in communities, such as Perryville, and although I wrote field notes and vignettes about many of the events I attended, I consider them to be of a personal and sensitive nature. Had reporting these moments been the aim of my visits, I would have asked for consent from the community to include that information after their review. This was not, however, the purpose. There was no purpose but to spend time and build relationships with people.

When time did come to travel, I was excited to finally leave the computer. First, I went to Anchorage where many families who are descendants of Katmai have relocated, and then to a place further away, 265 miles south of King Salmon to Perryville. I was joined by Linda Chisholm at the beginning of the trip to Anchorage and cultural resource staff member, Chloé Stevens, in Perryville. For the park to get to a level of continuity, it was an important opportunity to have Chloé and I, who had been developing outreach in our local communities since 2016, and Linda who had been at Katmai before us, to represent the park.

I scheduled to meet with five people in Anchorage. As with any best laid plans, they never seem to go as scheduled. Nevertheless, Linda and I were able to meet with Margie Macaulay-Waite and I went solo to meetings with the President of the Bristol Bay Native Corporation (BBNC) and a representative from the Native Village of Kanatak. In a previous year, 2016, I met with the BBNC President and his dad for an ethnohistoric interview. Racked with nerves during that first meeting, I felt more comfortable walking into his office that August. We had a small window of time as it was, so nothing was recorded except for notes I wrote down. What was shared in that meeting focused on consultation, impressions of what was and wasn't working well, and very helpful advice that will be shared in the next two chapters. There was a similar focus in my meeting with the Native Village of Kanatak's Tribal Administrator. Here too, our meeting wasn't recorded except for the notes I took on paper and important information was shared about impressions of consultation.

With travel slated to take a few hours on August 17th to Talkeetna, it was an early morning for me and Linda. After Margie had made trips to King Salmon, Brooks Camp, and Anchorage for consultation over the years, it was a fantastic opportunity to visit her home. In weeks prior, Margie and I discussed the nature of meeting with her. She wanted us to come to her community and see how they lived. After responding to requests by the park who dictated and controlled spaces for meetings, and where Margie was always a guest, Linda and I were now the guests. As Barnhardt and Kawagley (2005) pointed to the discomfort Indigenous students faced in schools, discomfort people reported in consultation proceedings is an example of incongruities in how meetings are administered for Native Americans (Swidler et. al 1997, p.231). With Margie, we were guided around and shared the whole day together. It was a relief to have food and moments together that were not in a prescribed setting. With focus reformed that could cultivate spaces like these, I believe important improvements can be made. I see challenges to support fewer formal settings when federal agencies are directed to follow prescribed methods. It would be my hope advancements can be made to support these changes or at least come to an arrangement that supports Indigenous and western models.

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The importance of models that acknowledge Indigenous ways of doing is exemplified best at Perryville. After returning to King Salmon on August 22nd, I only had a week and a half to plan for my next trip to the Native Village of Perryville. This was an especially important opportunity because it would be the first time Katmai staff visited the village in some time. Perryville is the settlement of villagers from historic Kaguyak-Douglas and Katmai Villages. Many were fishing in Kafia Bay at the time of the eruption in 1912 and relocated aboard a ship to settle in Perryville. To my great pleasure, after sharing the project with village President, Gerald Kosbruk, and speaking with a CKD Treasurer

whose mother was from Perryville, I was invited to join them during their annual Fishtival celebration. This celebration came at the close of the fishing season and is held every year. In conversations exchanged over email and the phone, requests shared a desire for me to primarily spend time with everyone at the Fishtival activities, potlucks, and board meetings that preceded these events. I was asked to give an informal presentation about projects our cultural resource division had worked on throughout the years and bring park publications that could be used at the school.

On September 4th, Chloé Stevens and I loaded the park's Cessna plane with food, a projector screen, projector, books, posters, two VR headsets, maps, and personal gear. Optimistic, we began the hour and a half flight to Perryville where we were both expected to arrive later that day. I called Gerald that morning to make sure weather conditions were good for flying, to which he enthusiastically responded, "It is beautiful and sunny here, a perfect day to fly." Working in Alaska, you quickly learn weather changes are meaningful, and what was perfect conditions can turn into dangerous conditions to fly in with little warning. I was used to flight delays, but on September 4th the disappointment when we were forced to turn around when only fifteen minutes separated us from Perryville hit me especially hard. There was a good chance that was our only shot. Linda and I would have to look at the budget for the project before a decision to try again was made. After Chloé and I returned to the office, heads down, I called Gerald to let him know we had to turn around. Disappointed, he encouraged me that Fishtival didn't start until the next day and predicted the weather was going to get better. I didn't have the strength to tell him there was a chance we wouldn't be able to try again but didn't want to share this news until I knew for certain.

The day had started on an excited note, met midway through with disappointment, and ended on a high note. The project could fund another attempt and we were lucky the next day conditions were beautiful, as Gerald predicted. We arrived only ten minutes behind schedule and joined the board meeting. Towards the end of the meeting, Gerald stood up to introduce Chloé and I, invited me to get up and share a little about myself, and the Partnering with Elders Project. The days that followed were filled with activities at the community center, games, dancing, awkward moments, a lot of food, and even more coffee. Chloé and I fell into a routine quickly which included frequent visits to our new friend's home. After I spent so much time communicating with CKD's Treasurer before we arrived in Perryville, it was a pleasure finally meeting in person.

Our days there were fast becoming fewer, and on the last day Chloé made our rounds thanking everyone and saying goodbye. Before our plane arrived to pick us up, I had a meeting with Gerald to discuss some ideas the community had for developing a cultural preservation project in partnership with Katmai and consultation. We both hoped this visit would initiate a stronger relationship between

the park and Perryville and looked forward to future visits. Then, it was time to go. We met our pilot at the plane, reluctant to leave but optimistic we would see everyone again. Without sharing every discussion we had with elders in the community, every event we participated in, presentation, and awkward moment, I point to the more important takeaway. That being, the most meaningful time was spent in spaces with the community of Perryville. The memories and connections developed in that time frame accomplished more than any letter received over the years ever had.

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My last meeting was with an elder and respected community member of Naknek, Allan Aspelund. It was the second time I was invited to his house. In 2016, as a new employee leading ethnohistoric interviews, I was a stranger to Allan. Understandably, his request to not have the interview recorded was honored. In September 2018 when I returned to his house, we spent a great deal of time catching up, talking about our last meeting, and recounting the wild summer we each just had. This time, Allan said he wanted the interview recorded and had a lot of ideas he wanted to share about the important task ahead to protect the history and transmission of their culture to next generations. Because Allan isn't a board member on a Native Village Council, Corporation, or Association, he doesn't receive the 'Summer Projects Letter'. Through the years, I had been sharing with him through personal communication updates about projects and park outreach events. He didn't rely on email and didn't always get to see flyers that were put out. He preferred to talk over the phone or in person and so our relationship developed in that way. Outside the significance this had for developing our relationship, another important theme concerns the credibility and trust that Linda Smith (1999) discussed in her book. The continuity of returning year after year and corresponding regularly built familiarity, credibility, and trust. As previously discussed in the section about TribalCrit and decolonizing perspectives, the legacy of colonial oppression in Indigenous communities negates an assumption of trust. Trust needs to be gained. Just as Allan was initially reluctant to trust me at first, I needed to show I could be dependable and trustworthy. To develop this is a challenge at the park service and I even struggle with it today. As a seasonal employee, I only get to spend a limited time at Katmai. I recognize that continuity is difficult to accomplish, and I have no doubt this impacts cultural resource departments elsewhere. In this case, one can only do their best and make every effort in the time they have.

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As predicted, many of the impressions about the format and protocol for initiating consultation shared room for improvement. Before the Partnering with Elders Project can proceed with the

suggestions of projects in cultural preservation and likewise achieve a measure of consistency in consultation and collaboration, we needed to develop an internal procedure and infrastructure to ensure consultation was proactive, ongoing, and engaging. Existing guidelines for developing meaningful consultation as they are laid out in Section 106 as well as how the park has been instructed to follow them are important to understand before suggestions for better methods are made. The latest statement regarding policy recommendations for consultation was issued by the Advisory Council on Historic Preservation (ACHP) on February 2, 2010. This statement came as a response to Barack Obama's November 5, 2009 issued Presidential Memorandum to develop renewed Department-wide policy in tribal consultation, Section 5(a) Executive Order 13175: Consultation and Coordination with Indian Tribal Governments.

In Chapter 3, more of the impressions and experiences people shared in interviews specific to consultation will be framed within an analysis of these ACHP recommendations, the National Historic Preservation Act, and review under its Section 106. To begin to clarify the complexities that come out of consultation protocol, I believe it's important to understand the legal framework, legal history, and court interpretations of the Preservation Act.

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Chapter 3: National Historic Preservation Act

The concerns that resulted in the development of the National Historic Preservation Act in 1966 responded to a global trend that began prioritizing national preservation (Public Law 89-665, 54 U.S.C. 300101-307108) It was sixty years after the first national preservation law, the Antiquities Act of 1906 (54 U.S.C.A. § 32030) that the Preservation Act was established to protect archaeological resources on federal lands and create national monuments protecting historic, as well as prehistoric cultural resources. Regulations that were implemented to support these preservation goals and the National Park Service's (NPS) issuance of policies are particularly salient when they are related to Native Americans' relationship to associated park lands. Drawing from case examples and impressions shared in the interview-process of this thesis, I demonstrate how guidelines that promote how federal agencies develop meaningful consultation can have conflicting outcomes or be ineffective in facilitating tribal engagement. To clarify some of the complexities as they specifically relate to consultation, subsequent sections will focus on the NHPA and statutory framework in the Section 106 review process, amendments to the Preservation Act and current regulations, and court interpretations of regulations according to case examples. The Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers case will be discussed to demonstrate how the court's interpretation of the Section 106 review process had consequences for the tribe. A case where court interpretations of Section 106 had favorable outcomes for the tribe, Pueblo Sandia v. United States, will also be discussed. These cases will be broadly reviewed to emphasize commonalities shared at Katmai and reveal contradictions in practice and outcomes of the Section 106 consultation mandate.

In this chapter I attempt to clarify complexities in the Preservation Act and Section 106 review process, while relating the complicated position Native Americans face operating in their context. This analysis is specific to a response to issues I brought up in my discussion about Tribal Critical Race theory and the unique legal position of Indigenous people. I expand that conversation to include the added impact procedures have limiting participation for tribes when they follow Western-centered praxis. These conversations all weave together to demonstrate the limitations of Section 106 review and illustrate why parks need to take greater emphasis in developing institutional procedures that are collaboratively agreed upon with associated tribes.

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As it was originally enacted, the NHPA implicitly advocates for the protection of "historic" and "prehistoric properties" by requiring federal agencies to "consider and consult" how permitted actions may adversely affect these cultural resources (54 U.S.C § 300308). Even the language is

outdated, where “prehistoric” is used instead of “pre-contact” or “ancestral”. The NHPA’s use of “properties” also conveys a real estate or western style map object that requires terrestrial boundaries. This legislation, in addition to the Antiquities Act, are both intended to protect cultural artifacts but have generally been criticized for failing to adequately protect Native Americans themselves (Cohen 2012; Hinds 2017; Marincic 2018; Keune 1984). Amanda Marincic (2018) points to serious congressional oversight in the NHPA’s original form that protected historic and/or prehistoric properties but didn’t contemplate the preservation of Native American history. These concerns of Native Americans go beyond what is arguably the original intention of the Preservation Act that meant to preserve buildings, objects, landscapes and archeological sites for their aesthetic or historic value—and in the case of archeological sites, their data potential. Some sites may be critical to religious practice, cultural identity, and their protection in a meaningful way carries greater weight. Historically, a tribe’s participation in protecting or maintaining access to sites has been significantly obstructed by lead agencies, such as the Brooks River example where the Council of Katmai Descendants fought to protect customary fishing rights. After Pelagia Melgenak’s allotment claim at Brooks River was overturned and uncontested ownership was granted to the Park, tension only increased when the Park started enforcing that people stop harvesting redbfish from Brooks River. A battle began over the “redfish issue”, as it is referred to today. Council of Katmai Descendant representative, Trefon Angasan Jr, helped author the redbfish bill which allowed descendants to continue traditional harvesting of redbfish in the Naknek Lake and Brooks River. The bill was challenged by sport fishers and environmental groups who raised concerns about the impact harvesting redbfish had to the ecosystem, an ecosystem that had been in balance long before the establishment of the Park (Ringsmuth, 213, p.173). The argument was made that salmon did not need to come from Brooks River and could just as easily be harvested in front of their villages. This unaffectionate and brazen challenge was responded to in kind, and Trefon Angasan explained in a series of meetings the significance harvesting redbfish at Brooks River serves as a spiritual event. Katmai descendants’ identity hinges upon the ritual of harvesting the fish and is far more important than the food it provides. Trefon Angasan was heard and unanimous support of the redbfish bill finally made it to the House of Representatives and was passed on July 18, 1996. The Bill, H.R. 1786, made it to the Senate and was then passed September 12, 1996 (Public Law 104-333, Section 1035). There are numerous cases, from the Seminole Tribe in Florida to the Sierran Me-Wuk in Central California, that have fought to keep access to cultural landscapes not already lost (Swidler et al. 1997).

Well-meaning efforts didn’t succeed in promoting those preservation goals that prioritized or aligned with Native American perspectives and more protection was called for in a 1992 amendment that expanded coverage to Native Americans, Native Hawaiians, and sites of cultural significance (54

U.S.C.A § 300101-1). With this expansion, attempts at balancing the perspectives of Native American tribes with the interests of federal and state agencies continue to leave Native Americans last to be heard. Primacy in these decisions had been articulated in the Preservation Act led by federal and state agencies, including the Park Service. To administer a preservation agenda, the NHPA established the Advisory Council on Historic Preservation (ACHP) as an independent agency to advise the President and Congress on matters related to historic preservation, guide proponent agencies in the drafting of preservation programs, promulgate regulations of the NHPA as it sees necessary, as well as review ongoing preservation projects by Federal, State, and local agencies (54 U.S.C § 3004102) With concerns for protecting areas and different ideas about how best to do that, it comes as little surprise disagreements have developed out of opposing values.

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Despite these opposing values, the role of accelerating a preservation program has been the responsibility of the Federal, State, and local agencies. This has included establishing specific mandates within the NHPA to develop, manage, and maintain programs. Among these mandates are Section 110 (16 U.S.C. § 470h-2) and Section 106 (16 U.S.C. § 470f) of the Act. These sections affirm a requirement to “assist State and local governments, Indian tribes and Native Hawaiian organizations, and the National Trust to expand and accelerate their historic preservation programs and activities” (54 U.S.C § 300101). Agency preservation programs are established under the Section 110 standards that promulgate a responsibility to nominate historic properties to the National Register of Historic Places (36 C.F.R. § 60.4). Agencies all have different timelines for complying with these responsibilities, some as late as the 1980’s. As I discussed in Chapter 1, although Katmai was established in 1918, it was not until 1996 that a cultural resource program was established at Katmai as a jointly-managed program with Lake Clark National Park (Ringsmuth, 2013, p.126).

In order to establish a National Register of Historic Places, the NHPA requires agencies to make a reasonable effort to adopt preservation programs and identify historic properties that may be eligible for listing on the National Register. To advance this initiative, the statute authorizes the NPS to act as the lead agency for issuing many of the rules and guidelines of the preservation program. As such, it assumes primacy for establishing a process of nominating historic properties to the National Register of Historic Places, evaluation of those nominations, and management of properties on the National Register (36 C.F.R. § 60.4). Properties on the National Register include “districts, sites, buildings, structures, and objects significant in American history, architecture, archaeology, engineering, and culture.” (16 U.S.C. § 470a(a)(1)). During the expansion of Brooks Camp when there was a growing recognition the area represented an important archaeological district, and after the

establishment of a cultural resource program at Katmai, Cultural Resource Compliance Coordinator Patricia McClenahan began writing the NHPA nomination for the district and worked to bring the agency into compliance with Section 106 and Section 110 (Ringsmuth, 2013, p.122). Any construction at Brooks prior to 1966 was little documented. This, at a time when development between 1950-1960 at Brooks Camp was at its height.

The National Register acts as a repository of historic properties and proponent agencies are charged with a responsibility to protect these resources and consider the effect federally assisted project undertakings have on them (King 2013). Guiding procedures for these aims are found in Section 106. In its most basic description, Section 106 requires certain procedures be followed in archaeological planning when it explicitly deals with properties and sites that have already been registered in the National Register (King 2013). It is designed to require responsibilities to receive proper issue licenses, permits, approvals for actions, as well as inviting consultation by tribal, state, municipal, and private property owners who may be affected where actions take place. As stated in Section 106,

“First, a proponent agency, in consultation with the State Historic Preservation Officer (SHPO), determined whether its project will affect properties on or eligible for the National Register. These may be specific historic buildings, whole neighborhoods or communities, archaeological sites, Indian sacred sites, or even historic landscapes. If such properties will be affected, and the effects may be adverse, the agency seeks the comments of the Council and consultation begins. At a minimum, consultation involves three parties-the proponent agency, the Council staff, and the SHPO. Other parties at interest may be brought into consultation, either as full consulting parties or as informal participants” (Keune, 1984, p.187).

If a proponent agency predicts there will be historic properties at a project site or an area (referred to as the Area of Potential Effect or APE) was already determined to be on the National Register, Section 106 establishes an accountability and protective process through the consultation mandate. Such is the case if a water main busts at Brooks Camp. Incidents such as these, what are considered non-emergencies by the SHPO, have greater success when they are preplanned for. In these cases, it is important to anticipate potential impacts that come from operations management and/or maintenance activities. After identifying conditions that meet standards that would require consultation, a Memorandum of Understanding (MOU) is the tribes’ best line of protection for preplanning procedures the park must follow. Council of Katmai Descendants representative, Margie Macualy-Waite, helped put together the now expired MOU stipulating procedures for unanticipated discoveries, such as the mandatory stipulation that the “park archaeologist” be notified immediately.

Because Brooks River and Brooks Camp are located within the Brooks River Archeological District National Historic Landmark, which is managed by the Park Service as a federal agency, Section 106 review is a required precondition to almost any park-related work orders or projects. In general, Section 106 requires the park give advance notice of projects, reasonable time for review of those projects, and fulfillment of any requests to consult on said projects.

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Regulations for agency-based consultation were originally outlined by the Advisory Council of Historic Preservation (ACHP) and codified at 36 C.F.R part 800, defining consultation as “the process of seeking, discussing, and considering the views of other participants, and, where feasible, seeking agreement with them regarding matters arising in the Section 106 process” (36 CFR § 800.16(f)). The process begins when a federal project is deemed as an “undertaking” (54 U.S.C § 300320). Under this, determination needs to be made, “whether the proposed Federal action is an undertaking... and, if so, whether it is a type of activity that has the potential to cause effects on historic properties” (36 CFR § 800.16(f)). If the action is determined as an undertaking, Section 106 consultation is implemented and guided by four general elements: 1) initiation of the Section 106 process, 2) identification of historic properties that could be affected by the federal undertaking, 3) consideration of potential impacts to historic properties, and 4) resolution of adverse effects to properties (Hinds 2017; Keune 1984).

At each of these steps, the implementing agency has a high burden to consider if the proposed undertaking impacts areas of cultural significance to Native Americans (Hinds, 2017, p.151). Where the agency recognizes Indian tribes “attach religious and cultural significance to historic properties”(36 CFR § 800.2(a)(4)), regulations in consultation emphasize the responsibility of federal agencies to recognize tribal sovereignty in a manner respectful of the government-to-government relationship. This responsibility was clarified and enhanced in 1992 NHPA amendments and Presidential Memorandum on Tribal Consultation, Executive Order 13175: “Consultation and Coordination with Indian Tribal Governments”. This made the ACHP duty-bound to implement new guidelines in Section 106 that require greater participation of Indian tribes and Native Hawaiian organizations in preservation planning. Regulations were amended in Section 106, 36 CFR Part 800, “Protection of Historic Properties” and included new guidelines to act in accordance with new requirements (ACHP 2019). Following review of each of the steps in the consultative process, examples will be drawn from Katmai and aforementioned cases to demonstrate oppositions, contradictions, and practices that have differing outcomes for tribes.

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The consultative process that begins with initiation of Section 106 concerns initial planning and identification of “parties entitled to be consulting parties and invite[s] them to participate” (36 CFR § 800.3(f)). The list identified by Katmai shared earlier includes federally recognized tribes, Alaska Native Village Corporations, Alaska Native Claims Settlement Act Regional Corporations, and the Council of Katmai Descendants. Guidelines after the identification stage encourage correspondence in the form of a letter or Email include maps, proposed work, potential impact areas, cultural properties already identified, and request that parties interested in commenting on the proposed action contact the agency. At Katmai, this correspondence is initiated in the ‘Summer Projects Letter’ described in Chapter 2.

Questioning whether this formatting for correspondence worked well was a concern speaking with tribal representatives. Four interviewees I spoke with expressed how although informative, oftentimes there was confusion about what the descriptions were detailing. Confusion came from using unclear language, scientific terms or acronyms without definitions, and not including areas where projects were taking place. Margie Macaully-Waite shared that in a discussion with one of the Council of Katmai Descendants’ elders, they asked Margie, “What does this mean?” regarding the ‘Summer Project Letter’ descriptions. In Chapter 2, I quickly mentioned I wished to edit my own letter about the Partnering with Elders project because of this statement. Although it wasn’t directed at my letter, after review of it again, I cringed at my language. Even in my attempt to write for a broader audience, I still caught myself adopting an academic tone. The commonality of using often formal and confusing language in scientific outreach is pointed as a barrier in other cases. In the book *Native Americans and Archaeologists*, an essay by John Ravesloot, a tribal archaeologist, he speaks from personal experience sharing the need to change perceptions to improve dialogue with Indian communities (Swidler et. al, 1997, p.172). The responsibility is for professionals to radically alter engagement and stop placing the burden on Native Americans to ‘learn’ to conform to understanding what we are trying to communicate.

Returning to the topic of our letter as a format for sharing information, all in all, little agreement was felt that our letter provided a clear understanding for information they were trying to convey and there was no map to reference in case a religiously or culturally significant area was within a project area or APE. When there was confusion over the project area or description, two out of five interviewees expressed a desire to have clearer instructions for reaching the Superintendent with concerns. Although a project lead’s email was included in each of the descriptions, I understand that most of the names may have been unrecognizable and depending on the time of year, their availability

may be sporadic. When authority over operations is ultimately dictated by the Superintendent and not the project lead, their presence is desired in consultation meetings. The timeframe concerns to reach the Superintendent project continues to be extended and the period for advance notice likewise lengthens.

Even in ideal situations where advance notice is given, regulations in the provision do not mandate a timeframe (36 CFR § 800.1(c)). What is generally adopted is notice no less than thirty days in advance. This has been viewed as enough time for tribal representatives to meet, review project actions, and submit comments. In an essay by Robert Brooks, he found leading consultation himself with a thirty-day notice didn't provide a reasonable time, "It is rare for tribes to come to a consensus in such a short length of time" (Swidler et. al, 1997, p.214). Brooks owed this not only to an unreasonably short time frame, but also pointed to tribes following procedures and processes themselves that didn't fit this formatting. In interviews about Katmai using this notice, interviewees believed the time frame posed considerable challenges to appropriately respond. Additionally, the timing of the letter came at an inopportune time for tribal procedures. Project letters sent by Katmai did not follow a predictable pattern, sometimes being sent in April, and other times in June or July. This timing has obvious problems because season projects are conceivably underway. Some projects start as early as May. This point in the season also comes during an otherwise busy time of year for Alaska communities. Interviewees and those I spoke with over the phone emphasized how the summer is a time for fishing and oftentimes councils or boards do not meet between mid-May to mid-August. In my first follow-up effort regarding my Partnering with Elders project, seven I spoke with over the phone shared that their tribal leaders were out fishing. By the time August rolls around when councils go back in session, the window of thirty days has passed, and projects are well underway. To avoid exacerbating this problem, Katmai does not keep a ticking clock of a thirty-day window and will include out year projects in the 'Summer Projects Letter' as well as projects that are underway that year. Such is the case where 'Summer Project Letters' in the years I've been at Katmai shared descriptions of the Partnering with Elders Project and Savonoski Archeological and Ethnographic Survey prior to their initiation and had ongoing updates through the projects timelines.

In the absence of a response to requesting consultation, this has generally been accepted as consent by the tribe. This conclusion is extremely dangerous and has gained the attention of legal scholars (Hinds 2017; Marincic 2018; Keune 1984). In ACHP guidelines, they allude to how many federal agencies struggle to reach tribes and receive responses. The challenges in consultation initiation and communication faced at Katmai are not unique and there are different contributions depending where you are that aid in this struggle. A case example from the highly publicized battle

that began in 2016 over the construction of the Dakota Access Pipeline (“DAPL”) resulted in the Standing Rock Sioux Tribe bringing action against the United States Army Corps of Engineers (239 F. Supp. 3d 77 (D.D.C. 2017)). One of the infractions involved not fulfilling obligations directed by the NHPA, namely the Section 106 consultative process initiation and notification. One of the contentions of the case relates to whether the United States Army Corps of Engineers (USACE) lawfully followed consultation requirements prior to the issuance of the permit for Nationwide Permit 12 (*Standing Rock Sioux Tribe*, 205 F. Supp. 3d at 7). The Sioux Tribe contends the USACE did not make a reasonable effort at the first stage of Section 106 because Nationwide Permit 12 (NWP) was issued without tribal consultation. For areas where federal regulations did require Section 106 review, according to the court, USACE demonstrated more than adequate effort to consult with the Standing Rock Sioux Tribe, ruling in favor of the USACE (*Standing Rock Sioux Tribe*, 205 F. Supp. 3d at 7). Together this has been challenged by the tribe and the ACHP but the challenge carried little weight in the eyes of the court. Correspondence sent by USACE, even when there was no response by the tribe, was evidence enough for the court to favor USACE’s position.

Despite best efforts with technologically advanced modes of communication, responses fall short of what is desired for promoting collaboration and relationships as an outcome of consultation. Over time, this has developed a negative reputation felt towards consultation. A major consequence of this reputation threatens Native Americans tribes the most when the treatment and attitude towards consultation is seen as futile. Permitting agency discretion to interpret what counts as meaningful consultation in this case hints at a failure to enforce firm commitments to constructive government-to-government relationships. Section 106 regulations don’t fully outline obligations towards tribes and allows the interpretation of consultation regulations to be expansively defined. This was evidenced in *Standing Rock Sioux Tribe v. U.S. Army Corps of Engineers*, where the interpretation of meaningful consultation was deferred to USACE.

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The process follows with identification of historic properties that could be affected by a federal undertaking. The agency has a responsibility to identify historic properties in or eligible for the National Register within the area of potential impact of project actions (36 CFR § 800.4(a)). It’s important to note the National Register is not a fully comprehensive repository of historic and cultural properties because it is constrained by its own definition as real estate property assets. It is unreasonable to expect the National Register includes everything. It wasn’t until the 1992 amendment, later revised in 2012, Congress issued instructions to the National Park Service to determine a better process for protecting traditional religious and cultural sites (16 U.S.C. 470(a) §§ 101(d)(6)(A-B)).

This recognition was an important step and makes consultation even more important for tribes “to identify its concerns about (these) properties”, to work with the implementing agency “to gather information from any (consulting) tribe” and contribute to the “identification and evaluation of” properties (36 CFR § 800.2(c)(2)(ii)(A); 36 CFR § 800.4(a)). If participation at this stage occurs, relevant sites can be identified and evaluated under current National Register criteria for nomination. Once this step is concluded, the State Historic Preservation Officer (SHPO) and implementing agency are responsible for determining a property’s eligibility (Keune, 1984, p.193). In a manner respectful of tribal sovereignty, the SHPO and agency, should recognize the consulting tribe as “possess[ing] special expertise in assessing the eligibility of historic properties that may possess religious and cultural significance to them” (36 CFR § 800.4(c)(1)). Judicious review in favor of tribes is implied.

Ancillary issues arise from this process and relate to sharing sensitive information and disclosing site locations. History has shown countless atrocities by third parties, the federal government, and the public exploiting culturally sensitive information. The NHPA does not provide assurances to tribes that similar conditions won’t happen again and raise serious concerns about confidentiality in consultation meetings (Marincic 2018) Sensitive information shared during consultation can include tribe’s intellectual property (IP), traditional knowledge (TK), and traditional cultural properties (TCPs). The ethics and legality of protecting this kind of information is supplanted by the Freedom of Information Act (5 U.S.C. § 552). Elder of the Council of Katmai Descendants, Mary Jane Nielsen, was recorded repeating the advice of her grandmother Pelagia Melgenak to “never talk to whites... all the telling would lead to is the whites taking everything” (Ringsmuth, 2013, p.170). Research has shown time and again cases where Indigenous knowledge has been appropriated and used without tribal permission. This appropriation is just one of the ways tension has developed toward agencies like the park and significantly add to reluctance sharing information about TCPs for being added to the National Register.

These conditions clearly create an asymmetrical relationship orienting power in exchanges towards federal and state agencies. Native American tribes have no remedy to protect sensitive information if it is shared. Contrary to that, agencies may at their own discretion keep certain information private from meetings, such as the information they choose to share. While the agency does have an obligation to obtain necessary information to fulfill its legal duties, it has full discretion determining how to meet this obligation. If the expectation is to have tribes share information in meetings with these conditions as the backdrop, there are clear concerns that impact the relationship.

In the case, *Pueblo of Sandia v. United States*, a lawsuit was filed against the United States Forest Service for making inadequate efforts to identify historic properties (50 F.3d 856 (10th Cir.

1995). Unlike the DAPL case, tribes seeking relief under the Preservation Act were successful. The court found the Forest Service “did not make good faith effort to identify historic properties, in light of its withholding of relevant information from state historic preservation officers (SHPO) until after the required consultation process had concluded. They did not make a good faith effort to identify historic properties and withheld information from the SHPO (50 F.3d 856 (10th Cir. 1995). Initially, in May 1993, the SHPO concurred with the Forest Service’s original assessment that Las Huertas Canyon did not have traditional cultural properties that would be affected by their project’s undertaking (50 F.3d 856 (10th Cir. 1995). An appeal was filed that June when the tribe notified the SHPO there were culturally sensitive sites they had notified the Forest Service of. The SHPO withdrew its concurrence after learning this information.

During the Forest Service’s assessment phase evaluating the canyon’s eligibility for inclusion in the National Register, the Forest Service contended they made a reasonable effort. Letters had been sent to the Sandia Pueblo requesting the location of sites, activities at the sites, and frequency of use (50 F.3d 856 (10th Cir. 1995). Sandia Pueblo did not want to provide the type of information the letters requested but noted the canyon’s significance to the Pueblo. Their reticence to disclose information can be understood. Without specific information supporting the Pueblo’s assertion, the Forest Service did not believe this enough evidence for eligibility to the National Register (50 F.3d 856 (10th Cir. 1995). Not only can connections from this case be made about consultation requirements, and the identification of cultural properties, but also concerns about protection of information. As mentioned, privacy becomes a concern for tribes and the irony is that in order to protect them on the National Register, locations need to be disclosed. Heeding the advice of the Council of Katmai elders, and likely many others, the risk of choosing not to disclose information can have the same risk of doing so.

...

The third stage of Section 106 involves consideration of potential impacts to historic properties. It states that an adverse effect occurs when,

“an undertaking may alter, directly or indirectly, any of the characteristics of a historic property that qualify the property for inclusion in the National Register of Historic Places in a manner that would diminish the integrity of the property’s location, design, setting, materials, workmanship, feeling, or association” (36 CFR § 800.5(a); § 800.4(b)).

This not only includes obvious visual effects, it includes audible or atmospheric changes, as well as temporary or long-term effects. Another important consideration in determining if a project causes an

adverse effect is whether there will be diminishment of a property's integrity for future enjoyment. The criteria for making determinations at this stage are broadly drawn and the federal agency is responsible for making the final say. Such was the case with Katmai's unplanned road. The events that led to this case began with a misunderstanding and followed with a chain of multiple failures.

The Alaska Regional Office visited Brooks Lake Fisheries Lab, what is called BL-3, in July 2014 to inspect perimeter drainage concerns. The Historical Architect that did the inspection cited a list of improvements for addressing said drainage concerns. Among those cited improvements, there included recommendations to engineer a swale to slope perimeter drainage to the lake and discussions to reconfigure the section of road closest to BL-3. Katmai staff followed other recommendations cited by the Historical Architect, but there was a misunderstanding of the projects scope and/or how to complete project elements, specifically related the engineered swale. And in October 2014, the unplanned road was built without further compliance and consultation. After getting permission to reconfigure the section of road closest to BL-3 from the acting Park Superintendent, the unplanned road was built. In the Historical Architect's cited improvements, it was acknowledged that the option to reconfigure a section of road required further compliance and consultation. Neither the staff nor Superintendent believed the construction posed any risks of adverse effects because digging was not going to extend to the depth where cultural properties might exist. Therefore, the construction was carried out without further compliance or review. This determination reveals a shortfall in Section 106 process that defers an agency the ability to determine whether an adverse effect exists (36 C.F.R. § 800.3(a)). For the unplanned road, this was not the only condition owing to a breakdown in the Parks responsibilities but can become a channel that fails to protect a tribe's interests.

If the SHPO, tribe, or any consulting party doesn't agree with a final determination by the agency, a disagreement can be filed (36 C.F.R. § 800.5(b)-(c)). At this third step, the federal agency still has authority to either respond to the disagreement by consulting with the party or requesting a review by the ACHP. The extent to which the ACHP becomes involved, be it at the request of a tribe or agency itself, may have different results (Dean 2018).

Balancing differences of what qualifies as an adverse effect may also show insufficiencies in this step of the NHPA. The responsibilities federal agencies have will usually contrast with the responsibilities of Native American tribes. At Katmai, balancing both interests in the management of historic properties like Brooks Camp is ongoing. It has been at the forefront of everyone's minds as visitation grows. Being able to safely accommodate visitation increase while protecting brown bears creates an ethical dilemma for the park. Weighing the effects of expanding, maintaining, and/or making modest upgrades to park infrastructures and their impacts to historic properties is challenging.

Just last year a permanent bridge and elevated approach boardwalk across the Brooks River was constructed and opened for the 2019 season. Years were spent planning for the bridge construction and consultation with the Council of Katmai Descendants was maintained in good faith. A characteristic that is often overlooked as an effect of this construction is the obvious change it has to the cultural landscape of Brooks River. Some of these concerns are mitigated with stipulated items within the Brooks River Visitor Access Environmental Impact Statement and MOA (for official use only). The MOA represents the Park's acknowledgement with State concurrence and Tribal signatories that the bridge does pose an adverse effect to the Archeological District and calls for ethnographic products related to Section 110.

A religiously and culturally significant site, the landscape at Brooks River will never be the same. Some would agree this diminishes the integrity of the area and for descendants it comes as a high cost. This also comes at a cost for the Park where they recognize improvement for visitor's experiences conflicts with Katmai's ability to also manage the area's nationally significant cultural resources.

...

The final stage, resolution of adverse effects to properties, is codified in 36 CFR part 800.6(a). This stage follows only when it's been determined an undertaking will result in adverse effects. The objective is to "develop and evaluate alternatives or modifications to the undertaking that could avoid, minimize, or mitigate adverse effects on historic properties" in cooperation with consulting parties (36 C.F.R. § 800.6(a)). This step is critical because tribes can enter the process of mitigating effects to cultural properties. The agency has a high burden to respect tribal concerns and adopt suggestions to resolve adverse effects. Whether this results in final outcomes favorable to tribes, or whether agreement with the federal agency on an acceptable measure that resolves any disagreements is met, depends on a number of factors. The agreement, if reached, is recorded in a Memorandum of Agreement (MOA), and stipulates procedures the federal agency will follow during the undertaking (36 CFR § 800.6(c)). Memorandum of Agreements can also outline remedies for losses. Such was the case with the bridge's construction at Brooks River. Two other stipulations in the MOA included Katmai support a project to write an ethnohistory of Brooks River and improving cultural interpretation by Park Rangers at Brooks Camp. Efforts that are ongoing, and like the Partnering with Elders project, are being advanced in a collaborative effort with our local communities.

In a case where agreement can't be met to resolve adverse effects, the failure is documented (Saugee 2018). If these conditions are met, there are few remedies for the tribe. While the Preservation

Act is intended to protect cultural properties, it doesn't impose any obligation or authorization by the ACHP to block agencies from moving forward with the undertaking if an agreement can't be met (Saugee 2018). The extent to which federal agencies choose to continue working towards a resolution or opting to move forward despite disagreement is at the discretion of the agency. This lax standard has been followed by court's ruling in favor of federal agencies on claims brought under the NHPA. Such has been the task to overcome in the Standing Rock Sioux case where disagreements between the Corps and the tribe have been met at every stage. Unfortunately, court interpretations of the NHPA have supported USACE's actions.

...

The National Historic Preservation Act plays, and continues to play, an important role in defining the government-to-government relationship between tribes and the United States. Despite a history of good faith efforts towards Native Nations with the Preservation Acts 1992 amendment, Executive Order 13175, and new agency guidelines promulgated by the ACHP, the application of regulations seem ineffective in increasing tribal representation. Moreover, the extent to which the Act serves as an avenue for Native Nations to protect their cultural sites and where agencies take seriously their duties to consult is evidenced in the above cases to have different results. Tribal interests in each case fail to fit into established categories of federal agency values. Whether tribal interests are ignored or granted scant protection, the lack of the NHPA securing an avenue to challenge standards of review fails in practice aids in the continued strain of trust between federal agencies and Native Nations.

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Chapter 4: Conclusion

Ending this thesis, I would like to offer a synthesis, not necessarily a conclusion, for opportunities to reconcile some of the shortcomings in the National Preservation Acts tribal consultation mandate. As the title suggests, my analysis of tribal consultation and the role of the park responding to this need aims to cultivate space for tribal self-determination. I cannot say that during the time I worked on this project I magically found or created a solution. Tribal consultation protocol cannot be improved in the span of a few months. Work aimed at improving these processes merits multiple years and relies on both continuity and relationship building among parks with Native American tribes. This has been ongoing at Katmai and my role since 2016 is a small addition to the continuing efforts by the park, the cultural resource program, and tribal representatives.

Throughout this thesis, what may be interpreted as a grim picture was illustrated. As I shared in Chapter 1, these perspectives give value to the importance this work has in Katmai and could have at other parks. Running throughout is a critique of park-specific obligations that fail to develop relationships with our local communities. My goal is to offer takeaways from closer examination of the existing challenges and come to a point where parks become more accountable to Native American tribes. I do not wish to diminish important work conducted in parks to engage local communities and tribes because I know these efforts exist. My intention is to illustrate that when looked at case by case, relationships are unique to park units, but there is reason to suggest guiding principles are inherently flawed.

Postures toward consultation are often dependent upon the agency and requiring a higher standard for building relationships can begin to improve consultation. Without being able to amend the Preservation Act, a starting place for parks can be developing new consultation models in participation with associated tribes. This has been one of Katmai's goals by speaking with tribal representatives. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments doesn't emphasize cooperative planning as a potential solution for improving consultation. There are opportunities for opening conversations, and I have found when proactive relationships are built prior to compliance contexts and there is consistent communication, tribal engagement has been encouraged. This level of engagement is evidenced in the Partnering with Elders Project where I initiated outreach with our local communities before the project was defined. This promoted a community driven approach where continued communication was a priority and responses shared the need for this work.

The topics in TribalCrit, decolonizing perspectives, and reflexivity covered earlier all share commonalities with the guiding principles I found were themes in community-based research: permission, partnership, perspective, praxis, and reciprocity. These were critical concepts in the generation of the Partnering with Elders Project. As I demonstrated, these guiding principles and broader themes that impact our relationships with tribes carry weight in consultation and inhibit it from being meaningful and constructive. On top of that hill in Perryville, huddled around Allan's table in Naknek, and walking around Talkeetna with Margie, I recognized these were the moments I needed to learn from. We need to get to a point where we aren't controlling the setting, format, or space to build relationships. We need to get to a point where relationships are predicated on time spent together to develop respect, trust, and reciprocity. The "letter" that I talked so much about is not an agent that develops these outcomes. A greater effort will be required to develop both a sustainable and collaborative relationship. It is an effort worthy of our time and will fulfill our more important obligations towards honoring a government-to-government relationship.

...

Before the Partnering with Elders Project can proceed with the suggestions of projects in cultural preservation and likewise achieve a measure of consistency in consultation and collaboration, an internal procedure and infrastructure is needed. Goals of this infrastructure need to ensure consultation is proactive, ongoing, and engaging. Although this is still a work in progress, there are already ways Katmai plans to respond and adopt suggestions into a new standard operating procedure. Before I contribute some of those responses, I first want to share an example of an already adopted internal procedure that has important implications for reconciling one of the tribal consultations' shortcomings.

One of the shortcomings discussed in Chapter 3 was the absence of protecting sensitive information during consultation meetings against public requests in the Freedom of Information Act (FOIA). This shortcoming in the Preservation Act troubled my mind and without any power to change it myself, I looked at other examples that require a higher standard of review that could be adopted. An example used by the Coeur d'Alene tribe includes a process developed in a partnership project with the University of Idaho. The 'Protocol and Best Practice for the Research on and Public Distribution of Information from Projects involving Indigenous Peoples' was completed and released in 2015. The protocol is suggested for protecting Intellectual Property (IP) and Traditional Knowledge (TK) from unapproved usage. It also suggests a process for safely disseminating, obtaining, and securing researched information. The authors of the protocol recommend applying four principles. They outline

and share a template that can be edited for individual needs (Appendix B). Although this protocol was originally aimed at research specific projects, it is an important template that could be adapted for consultation specific use. This, as a tool, can be adopted into existing Memorandums of Understanding (MOU) or Memorandums of Agreement (MOA). When there isn't a previously established protocol, it becomes even more important. Resolutions can begin to stipulate that information derived from meetings cannot be disseminated without formal review and prior consent from the MOU signatories. This will no doubt necessitate time permitted to form these internal and external communications, but it is time worthy of our attention.

...

In these final thoughts, I would like to offer solutions I have posed for responding to requests that are the unique concerns of Native groups I spoke with. Starting with a theme that carries great weight is timing of consultation. Where timing is obviously important, Katmai is taking a greater priority in letters being sent earlier in the season. In that way, tribal councils will have all the information in the spring when council and board meetings are being held, there will be sufficient time to raise concerns where they have been identified, and consultation with the park can begin before the summer. Listening to the suggestions of tribal representatives, there is also an effort to work on the formatting for how we share information. Moving away from the formalized letter, recommendations are made to reserve scientific language for internal reports. Communicating to tribes in plain language that nonprofessionals can understand and avoiding professional acronyms, or at least defining them, are important to adopt moving forward. Including maps and areas where studies impact will also improve how communication is disseminated. There should not be a shadow of doubt after the information is shared. Likewise, we hope to use a pamphlet that can organize and share images, maps, and descriptions altogether. The hope is that presentation in this format will be more engaging.

Requests for better instructions contacting the park and how that process can be initiated will be more explicit. Speaking over the phone and learning that tribal roles can rotate as often as every two years means an added level of cooperation and attention by the park. Familiarity with Katmai procedures shouldn't be assumed. Someone may have a previously existing relationship and familiarity, but this cannot be counted on when there is a chance of changing leadership. It would benefit the park to be able to anticipate rotation in tribal leadership roles and ensure introductions and outreach starts early.

Katmai consults with many groups, but this can be managed if more input is recorded about each tribe individually. To reiterate what I stated earlier, work aimed at improving these processes merits multiple years. Some I spoke to recorded interest to be notified of park projects only when they impacted coastlines because these were the parkland areas they had greatest association with. Or in the case of one of our Regional Native Corporations, they requested notification of work only when it impacted infrastructures at Brooks Camp. Knowing this information for other groups could help manage the load and allow more attention to be given to where vested interest has been expressed. I understand ensuring we are transparent with everyone is good practice. In the same respect, we risk information overload and fatigue. Tribes are receiving correspondence from dozens of agencies all the time that can become overwhelming, especially for those that only have a few staff members. If we are more intentional and proactive about communication when we know work is slated to be done in an area significant to a few Native villages, there is a greater likelihood engagement in projects will follow. It is in the interest of the park and Alaska Native tribes that attention to their concerns be prioritized rather than flooding them with nonessential information.

Although these suggestions reflect how Katmai can respond to the unique needs of our local communities and may not carry as great a weight at other parks, some takeaways can have shared value in Alaska. These perspectives give value to the importance of community-based work that acknowledges the unique identity of every tribe and the shared acknowledgement that applying a standard procedure across the board hinders the ability to engage in meaningful consultation.

As a final thought, I return to the quote I opened with, “We said, ‘We need to sit down together every year and look at each other across from one another. We need to eat together before you go into the Park.’ This is what started this tradition of having food with your staff” (O’Hara 2016). At the time I didn’t understand all the sentiments behind this tradition. I understand now the community is sharing more than a meal with park staff. They are communicating a larger pattern of practicing cultural persistence where they share food harvested from the land and stories bathing the landscape. In these settings, the community controls the story of Native presence at Katmai. They share memories and connections to the land, yes. But these connections are not confined to only the past, just as tribal members aren’t confined to be relics of the past. The community is still transmitting their Indigenous identities across generations and continues to be a living culture.

Appendix A - Partnering with Elders Introductory Letter Template

Name
Address
Telephone

July 5, 2018

Dear _____,

Greetings! My name is Christina Phillips and I wish to take the opportunity to introduce myself and the “Partnering with Elders” project funded through Cultural Resources at Katmai National Park and Preserve. I am contacting you in hopes that you or other community members may be interested in further collaboration with myself and the park.

A brief bit about myself: I was raised in Georgia, surrounded by Appalachian Mountains. Here I developed a deep and abiding relationship to wild landscapes, and a curiosity for the ways people build relationships to the natural environment of their homelands. Intrigued, I left the South to explore ideas about human history, community relationships to landscape, and the structuring of past human-environmental identities into the present. I traveled to Utah, Central America, and finally Alaska over the last three years to work on several archeological projects, and during this time my interests expanded to include changes in Native American tribes’ relationships to ancestral landscapes, cultural resources, subsistence, land use strategies, as well as Federal Indian Policy surrounding consultation with tribes.

I began seasonal work with Katmai National Park and Preserve Cultural Resources in 2016 specializing in ethnohistory and consultation. Last fall I began a graduate degree in anthropology with a focus in Native American Law from the University of Idaho. The interest in Native American Law grew from a desire to emphasize sovereign practice and tribal self-determination in Federal Indian Policy, especially in regards to consultation. It is my hope to develop research surrounding these topics in an effort to improve the relations between the local community, Alaska Native tribes, and the park.

The Cultural Resources Division is currently involved in multiple projects that have goals of strengthening collaboration with Alaska Native tribes and our local communities. Aims of this project include emphasizing the rich cultural history of the region through ethnohistory and community involvement in projects. Consultation is the starting point and site where goals of inviting this participation with tribes is concerned. As a partner of this project, I am interested in focusing on the park’s consultation practice with tribes and ethnohistory projects through roundtable discussions and interviews regarding these procedures.

Thank you for taking the time to review this request and project description.

Cordially,

Appendix B - Protocol and Best Practice for the Research on and Public Distribution of Information from Projects involving Indigenous Peoples Template

Exhibit [X] Traditional Knowledge

Terms & Conditions –Traditional Knowledge

- 1) UNIVERSITY and CONTRACTOR hereby acknowledge and agree that the terms and conditions set forth in this Exhibit [X], Traditional Knowledge, are intended to supplement the terms and conditions of the University of Idaho Contract for Services ("Contract"), and that, to the extent that there are conflicts and/or inconsistencies between the terms and conditions of this Exhibit [X] and those of the Contract, the terms and conditions this Exhibit [X] shall control.

- 2) Definitions.
 - a. "Background Intellectual Property" means all UNIVERSITY, CONTRACTOR, and third party intellectual property, including but not limited to inventions, patents, trademarks, copyrights, computer software, and tangible analysis techniques created and/or first reduced to practice prior to or outside the scope of the Contract.
 - b. "UNIVERSITY Sole Intellectual Property" means individually and collectively all intellectual property that is created and first reduced to practice solely by UNIVERSITY faculty, staff, students, or contractors, excluding CONTRACTOR, during the term of and through the performance of the statement of work under the Contract.
 - c. "CONTRACTOR Sole Intellectual Property" means individually and collectively all intellectual property that is created and first reduced to practice solely by CONTRACTOR employees during the term of and through the performance of the statement of work under this Contract.
 - d. "Joint Intellectual Property" means individually and collectively all intellectual property which is created and first reduced to practice jointly by UNIVERSITY and CONTRACTOR during the term of and through the performance of the statement of work under the Contract.
 - e. "Confidential Information" means any data or information having commercial value which may include but not be limited to data, databases, product plans, strategies, forecasts, research procedures, marketing techniques and materials, customer names and other information related to customers, price-lists, pricing policies, and financial information which the Parties consider sensitive and which is not generally known to the public. With respect to CONTRACTOR, "Confidential Information" shall also include Traditional Knowledge of CONTRACTOR, which may include, but is not limited to, religious, cultural, or ceremonial information.
 - f. Traditional Knowledge means knowledge that is:
 - i. generated, preserved and transmitted in a traditional and intergenerational context;
 - ii. distinctively associated with a tribe which preserves and transmits it between generations; and
 - iii. integral to the cultural identity of CONTRACTOR tribe, which holds the knowledge through a form of custodianship, guardianship, collective

ownership, or cultural responsibility. This relationship may be expressed formally or informally by customary or traditional practices, protocols or laws. Such knowledge should be intergenerational in character, should have an objective link with the CONTRACTOR tribal community of origin, and should have a subjective association within that tribal community, so that it forms part of the tribal community's own self-identity. Traditional Knowledge may be contributed by CONTRACTOR, CONTRACTOR's employees, or individual members of CONTRACTOR tribe.

3) Intellectual Property Rights.

- a. Background Intellectual Property Rights. Except as otherwise expressly provided by this Agreement, the Background Intellectual Property of each Party is and shall remain the separate intellectual property of the UNIVERSITY or CONTRACTOR, as applicable, and is not affected by this Agreement. This Agreement shall not be construed as implying that either Party shall have the right to use the Background Intellectual property of the other Party, except as provided herein.
- b. Sole Intellectual Property Rights.
 - i. All right, title, and interest to all UNIVERSITY Sole Intellectual Property shall be owned solely and exclusively by and vest entirely in UNIVERSITY.
 - ii. All right, title, and interest to all CONTRACTOR Sole Intellectual Property shall be owned solely and exclusively by and vest entirely in CONTRACTOR.
- c. Joint Intellectual Property Rights. All right, title, and interest to all Joint Intellectual Property shall be jointly owned by UNIVERSITY and CONTRACTOR.

4) Licensed Intellectual Property Rights.

- a. Project Intellectual Property. Each Party grants to the other a non-exclusive, fee-free and royalty-free, irrevocable, nontransferrable, world-wide license, without the right to sublicense, to its Background Intellectual Property used in the project or Sole Intellectual Property, which licensed rights shall be used only in the performance of the statement of work of the Contract; provision of any deliverable to any federal agency, as applicable; or for non-commercial purposes, including but not limited to research and educational purposes. Traditional Knowledge of CONTRACTOR shall be governed by the license granted to UNIVERSITY under Section 4(b).
- b. Traditional Knowledge. CONTRACTOR grants to UNIVERSITY a non-exclusive, fee-free and royalty-free, nontransferrable, world-wide license, without the right to sublicense, to its Traditional Knowledge that it has contributed to this project, which licensed rights shall be used only in the performance of the statement of work of the Contract; provision of any deliverable to any federal agency, as applicable; or for non-commercial purposes, including but not limited to research and educational purposes.

This license to rights in Traditional Knowledge shall be subject to the limitations set forth below and may be terminated by CONTRACTOR in the event that UNIVERSITY breaches its obligations under these limitations.

i. License Limitations.

1. Initial Consultation. UNIVERSITY and CONTRACTOR shall, prior to performing the statement(s) of work under the Contract, use reasonable efforts to identify, in writing, Traditional Knowledge that

is likely to be contributed to the project and that CONTRACTOR deems to be sensitive in nature. Any Traditional Knowledge designated through this initial consultation as "sensitive" or "confidential" shall be treated by UNIVERSITY as Confidential Information of the CONTRACTOR; the confidential status of such sensitive Traditional Knowledge shall be further evaluated through the coordinated, ongoing review of Traditional Knowledge by the designated representative[s] of UNIVERSITY and CONTRACTOR, as described in Section 4(b)(i)(2)(b).

2. Ongoing Consultation.
 - a. Designated representatives of UNIVERSITY and CONTRACTOR shall meet at regular intervals during the course of the performance of the statement(s) of work to evaluate whether Traditional Knowledge gathered or contributed after initiation of the research should be designated as Confidential Information of the CONTRACTOR; the status of Traditional Knowledge identified as Confidential Information by CONTRACTOR during the initial consultation shall also be evaluated at each meeting.
 - b. UNIVERSITY shall consult with CONTRACTOR regarding any use of Traditional Knowledge subject to the license granted in Section 4(b), when such use is not in furtherance of the statement(s) of work of Contract or in satisfaction of obligations of the UNIVERSITY when contractor has been engaged in support of UNIVERSITY'S efforts on a federal grant or contract. Such consultation shall be for purposes of confirming that the proposed use under the granted license is non-commercial in nature and adequately protects the confidentiality of identified sensitive Traditional Knowledge. This consultation may be part of, but does not supersede, the research approval process of CONTRACTOR or review by the Institutional Review Board of UNIVERSITY.
3. Unauthorized Disclosure of Confidential Traditional Knowledge. Disclosure by UNIVERSITY of Traditional Knowledge that has been gathered by UNIVERSITY or CONTRACTOR and/or contributed by CONTRACTOR to this project, has been identified by CONTRACTOR, in writing, as Confidential Information, and is subject to the obligations for Confidential Information set forth in Section 6 unless authorized in writing by CONTRACTOR, shall, at CONTRACTOR'S discretion, result in termination of the license to Traditional Knowledge granted in Section 4(b).

Notwithstanding the foregoing limitations on the license granted in this Section 4(b), UNIVERSITY and CONTRACTOR agree that UNIVERSITY shall have an irrevocable license to any Traditional Knowledge incorporated into and integral to a deliverable under a federal award or contract from the federal government; the underlying Traditional Knowledge shall remain the property of the CONTRACTOR.

- 5) Confidentiality.
- a. In the course of performing under this Agreement, CONTRACTOR may disclose to UNIVERSITY CONTRACTOR Confidential Information, and UNIVERSITY may disclose to CONTRACTOR UNIVERSITY Confidential Information pursuant to proposing to or soliciting from the other Party research and/or service proposals and performing statement(s) of work of the Contract (hereinafter referred to as "Purpose").
 - b. UNIVERSITY agrees to hold in confidence and not disclose any and all CONTRACTOR Confidential Information received from CONTRACTOR hereunder. CONTRACTOR agrees to hold in confidence and not disclose any and all UNIVERSITY Confidential Information received from UNIVERSITY hereunder. The confidentiality obligations of each Party receiving Confidential Information shall extend for three (3) years from the date of disclosure, when such disclosure is made consistent with Section 5(c); with respect to Traditional Knowledge designated as Confidential Information, such information shall be maintained in confidence by UNIVERSITY indefinitely. Unless otherwise permitted by this Agreement, each Party shall use the Confidential Information only for and to the extent required to accomplish the Purpose. The Parties shall only disclose the Confidential Information to those faculty, staff, or students that have a legitimate business need for such information and only for and to the extent required to accomplish the Purpose or to exercise the rights granted herein. Either Party may disclose the other Party's Confidential Information to its affiliates, contractors, and consultants that are under a written obligation of confidentiality no less restrictive than contained herein to the extent necessary to accomplish the Purpose.
 - c. Written information exchanged hereunder shall be clearly marked with an appropriate stamp or legend "Confidential Information." Markings such as "Confidential Information." Markings such as "In Confidence," "Confidential," "UNIVERSITY Use Only," or "CONTRACTOR Use Only" shall also be sufficient. Non-written information exchanged hereunder shall only be considered Confidential Information if, at the time of such disclosure, the Confidential Information being disclosed is identified as confidential and the disclosing Party provides the receiving Party within thirty (30) days after such disclosure, with a writing which affirms the confidential nature of the disclosed information and clearly identifies the nature and content of the disclosed information. Notwithstanding the forgoing, non-written Traditional Knowledge shall be treated as Confidential Information until such time that UNIVERSITY and CONTRACTOR have had the opportunity to review disclosed Traditional Knowledge, consistent with the consultation process described in Section 2(a), and CONTRACTOR has described in writing any disclosed Traditional Knowledge to be treated as Confidential Information under this Section. After such consultation, any non-written Traditional Knowledge reviewed by CONTRACTOR but not described and affirmed in writing as confidential, shall not be treated as Confidential Information.
 - d. Neither Party shall be liable to the other Party for the disclosure of Confidential Information that:
 - i. is published or otherwise in the public domain through no fault of the receiving Party; or
 - ii. can be demonstrated by the receiving Party to have been in its possession prior to receipt under this Agreement; or

- iii. is obtained by the receiving Party without restriction from a third party; or
 - iv. is independently developed by the receiving Party by individuals who have not had either direct or indirect access to such information; or
 - v. is disclosed by the receiving Party to a third party with the written approval of the disclosing Party without any restriction; or
 - vi. is required to be disclosed under operation of law, including but not limited to the Idaho Public Records Law, Idaho Code §§9-337 through 9-350.
 - vii. is reasonably ascertained by UNIVERSITY or CONTRACTOR to create a risk to a trial subject or to public health and safety.
- e. In furnishing any information hereunder, the disclosing Party makes no warranty, guarantee, or representation, either expressed or implied, as to its adequacy, accuracy, sufficiency, or freedom from defects or that the use or reproduction of any information shall be free from any patent, trade secret, trademark, or copyright infringement. The disclosing Party shall not be liable for damages of whatever kind or for any costs, expenses, risks, or liabilities as a result of the other Party's receipt or use of or reliance on any such information furnished hereunder.
- f. The provisions of this Section shall survive termination of this Contract.
- 6) **Publication and Presentation.** UNIVERSITY, or its employees or students, may issue publications or give presentations based on the statement(s) of work of the Contract, excluding the Confidential Information of CONTRACTOR. UNIVERSITY will provide CONTRACTOR an opportunity for thirty (30) days prior to the proposed submission of any publication or the delivery of any presentation to review such publication and, if necessary, request UNIVERSITY to delete any reference to CONTRACTOR'S Confidential Information. Furthermore, CONTRACTOR shall have the right to request a delay in publication or presentation for up to thirty (30) additional days, if necessary, to allow for filing of patents if such publication or presentation contains patentable subject matter. The right of review CONTRACTOR has under this Section shall terminate twelve (12) months from completion of the Contract, except with respect to any review required consistent with Section 2(b). In no event shall any of CONTRACTOR'S Confidential Information be included in any publication or presentation without written authorization from CONTRACTOR.
- 7) Nothing in this Agreement shall be deemed to affect UNIVERSITY or CONTRACTOR'S obligations under the Freedom of Information Act (FOIA) or UNIVERSITY'S Obligations under the Idaho Public Records Law (IRPL) or UNIVERSITY or CONTRACTOR'S ability to assert exemptions with regard to FOIA or IPRL requests applicable.
- 8) Nothing in this Agreement shall be construed as a waiver or diminishment of the inherent sovereign immunity of the Coeur d'Alene Tribe or of the sovereign immunity of the State of Idaho or of the University of Idaho, a public corporation, state educational institution, and a body politic and corporate organized and existing under the constitution and laws of the state of Idaho.