

ABSTRACT

Title of Thesis: DO CULTURAL RESOURCE LAWS & FEDERAL REGULATIONS ADD CONSTRAINTS TO NATIVE AMERICAN TRUST LAND MANAGEMENT AND TRUST LAND DEVELOPMENT OUTCOMES?

Wendy Ferris-George, Cultural and Heritage Resource Management, Master of Professional Studies, 2022.

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This research was conducted to evaluate the way cultural resource management laws and federal regulations impact Native American trust land management. Tribal trust land is land that has been set aside for the exclusive use and benefit of a tribe but is owned by the United States Government. Trust lands were once the aboriginal lands, exclusively controlled and managed by individual tribes through traditional land management practices. Traditional land management is a part of cultural and heritage resource management since the resources promoted by these practices are integral to ancient religions that are still practiced today. Current regulatory laws have a negative impact on Native American people by restricting their ability to manage tribal trust land with traditional land management tools, like fire. In addition, these laws cause time delays and economic losses to tribes who are in the process of development for economic purposes. Federal administrative agencies, such as the Bureau of Indian Affairs (BIA), were established to administer Native American programs as part of the executive branch of government. The BIA is responsible for regulating trust land compliance with federal laws. Native American Tribes and their traditional practitioners are challenged by overlapping cultural resource compliance laws and federal regulations. Tribes express that there are social and economic impacts to the people who rely on the land for purposes of religious and economic well-being.

DO CULTURAL RESOURCE LAWS & FEDERAL REGULATIONS ADD
CONSTRAINTS TO NATIVE AMERICAN LAND MANAGEMENT AND LAND
DEVELOPMENT OUTCOMES?

by

Wendy Ferris-George

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I would like to acknowledge the Hoopa Valley Tribe's Forestry Department staff, the Yurok Tribal Staff, and the Alturas Indian Tribal Staff for their participation. I am grateful for the time you dedicated by helping me gain valuable information that will be of great importance in the future. This pertinent data will provide a gateway to expand this research and provide valuable information to government agencies to deepen their understanding of how overlapping compliance laws impact success in Native Country. The data you have provided will help lead this research in a direction, that I can only hope, will be helpful to you while managing your aboriginal lands that are held in trust status by the federal government.



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Forward

He:yung, , Ayukii, Aiy-ye-Kwee, Greetings!

Today is an opportunity for me to share my personal journey with you. I am a Native American woman, known as Poppy to those who live along the Klamath and Trinity Rivers. I am blessed with four beautiful children. I am an enrolled Hupa and descend from the Karuk, Yurok, and Chameriko people. I grasp the teachings that have been handed to me by family, friends, ancestors, spirituals, and all living things. Many of these lessons have been passed down since time immemorial, but were stripped from being practiced when settlers came to our land.

I am a basket weaver who has been determined to hold on to the traditional land management practices the old people practiced. Over 20 years ago, I was able to make and bring back the teachings of the maple bark skirt, the jump dance basket and the porcupine quill headwrap, which had not been made in over 100 years by the Hupa People. For generations, our tribes have been in a continuous battle to revitalize our land and water. In 2016, I was appointed by my father's tribe (Karuk) to be a part of their team. I was appointed to serve on the Klamath River Renewal Corporation (KRRC) Board of Directors (the largest dam removal project in the world). I began my journey to protect our traditional rights 29 years ago. Whije: tilte', my spirit is strong (Hupa). Taay u'oorahitti nanikri, I have a purpose (Karuk).

My father was an enrolled Karuk tribal member who was a dance leader for the Jump Dance Ceremony along the Klamath River until his passing from Leukemia in 2020. My mother is an enrolled Hupa tribal member but also descends from the Chameriko

and Yurok tribes. Together my parents had five children and raised us all to enjoy spending our time in the mountains gathering, hunting, horse riding and fishing.

In 1999, I began my career in archaeology after protecting cultural resources for the Hoopa Forestry Department during wild fires. I later became a para-archaeologist with the United States Forest Service and eventually attended Sonoma State University where I obtained a Baccalaureate Degree in Anthropology.

When I first began protecting cultural resources during wild fires, the local tribes were having a difficult time working with federal agencies like the United States Forest Service (USFS). The Hoopa, Yurok, and Karuk tribes fought hard to allow native cultural practitioners to protect our own cultural resources during wild fires. We had to become certified fire fighters and pass a pack test (walk 3 miles, carrying 45 pounds, in less than 45 minutes) which left many elders out of the equation. Traditional practitioners have strict federal guidelines we must follow in order to protect our sacred places. It is my goal to help change the systems that are outdated or broken and have negative impacts on the ecosystem and people.

This thesis studies impacts the United States federal cultural resource laws & federal regulatory practices have on Native American people and the tribal trust lands they reside. Federal and State Regulatory Agencies enforce Environmental Compliance Laws that have negative impacts on Native American Tribes. Title 25 of the Code of Federal Regulations (CFR), is law created by the United States Congress describing in detail, how federal agencies are to manage an entire race of people, specifically Native American Tribes, otherwise called “Indians.”

In order to gather pertinent information for this thesis, four Native American Tribes from Northern California were originally contacted to participate. The Hupa, Yurok, and Alturas Tribes ended up being the participants in this thesis. The work that has been completed to determine how cultural resource and federally mandated regulatory laws impact tribes, are held by the tribes, their elected government officials, cultural practitioners and their natural resource departments. The participating tribes live on trust lands which are lands held by the United States government for the use of the tribe but the United States government holds legal title.

I developed a questionnaire and received approval from the Institutional Review Board (IRB) at the University of Maryland for the purpose of obtaining data. These Tribes were selected based on their location and history of managing environmental or land development projects and due to time constraints of the thesis research. Native American Tribes are required to follow federal laws that impact land, water and economic development projects that take place on tribal trust land. Tribes are finding it hard to manage their land in a manner that is consistent with historical land management techniques due to all the contemporary laws and regulations where overlapping compliance is required of them. Some tribes find it difficult to economically develop due to the time it takes to adhere to the federal regulatory processes inflicted on them by the Bureau of Indian Affairs (BIA).

Information gathered through the interview process revealed that lands adjacent to tribal trust lands are being contaminated, mismanaged and implies that resources necessary to the tribes are being degraded.

For example, the Hoopa Reservation is a 12-by-12-mile square and half of the reservation is bordered by non-tribally managed land. The land is managed by the federal government and private land owners. The federal government does not allocate funding to properly manage the forest and wilderness land. The negative impacts include devastating fires that raise havoc for the Hupa People. The land that is adjacent to the Hoopa Reservation is aboriginal land that was once traditionally managed by the Hupa. A large part of historical forest management was traditionally done by implementing fire as a means of managing fuel, vegetation, hybridism, and disease. In addition, privately owned land is being contaminated by large scale marijuana growing that diverts thousands of gallons of water, also polluting the river system and adding to the desecration of the salmon population the tribes depend on.

Interviews were conducted with participants from three Native American Tribes and their staff in order to obtain data regarding the process and impact federal compliance laws have on traditional land management or economic development projects.

The Hupa and Yurok tribes are heavily engaged in traditional forest management practices and have continued their traditional ceremonies since time immemorial. The Alturas Tribe was left with almost no land to manage for traditional purposes and most of their people were killed when settlers arrived. The small land base that the Alturas Tribe does have is used primarily for economic development purposes for the benefit of the tribal members that are left. The Hupa and Yurok continue to hold on to their ancient religion but are limited by strict regulatory processes. The tribes have always believed their religion is intertwined with the

ecosystem and live a religion based on symbolic living. The rules of their religion come from the forest, rivers, streams and animal life. They rely heavily on the health of their environment to keep them healthy, and suffer as a society due to a lack of resources. Each tribe has been negatively impacted by their limited ability to manage their land in the way they see as healthy or beneficial to their people.

Oversight of native lands begins with the United States President and a government-to-government relationship that was established through treaties that later became executive orders. The Department of the Interior is the lead agency that regulates tribes. The Bureau of Indian Affairs has daily and direct oversight of tribes. The United States Department of the Interior's official webpage passage reads:

We maintain government-to-government relationships with Indian tribes, and facilitate support for tribal people and tribal governments. We promote safe and quality living environments, strong communities, self sufficient and individual rights, while enhancing protection of the lives, prosperity and well being of American Indians and Alaska Natives (www.bia.gov).

Due to a lack of funding to manage resources in accordance with the law, tribes and/or their tribal departments apply for grants to fund projects. These grants have strict time frames for completion and drawing down funds in order to stay in compliance. The Bureau of Indian Affairs (BIA) is assigned the duty and oversight of self-determination amongst tribes. The rigorous regulatory process enforced by the BIA stalls project development and puts funding at risk of being returned to the granting agency.

"The entire reservation is under the auspicious or jurisdiction of the BIA. Even though we have a lot of fee land within the tribe, even the fee land, fee simple land is under jurisdiction of the BIA so it makes it complicated for the tribe to do projects" (Yurok Tribe member).

Native American traditional practitioners, land and water managers, among others, are finding it challenging to implement projects on their aboriginal land due to cost associated with hiring qualified staff to come live in remote areas where the tribes reside, and the timely regulatory law process. Traditional and ecological management is not always conceivable due to numerous overlapping regulatory laws that impact project outcomes. Title 25 of the Code of Federal Regulations, which the BIA references to regulate Tribes, are regulatory laws like the National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA) that must be complied with. Regulation under these laws is time consuming and doesn't always fit "the window of opportunity" to conduct culturally-appropriate resource management in a traditional manner and stall economic development projects.

The questionnaire used in this thesis concludes that the participants in the interviews all have a clear understanding of trust land, how it is acquired and held by the federal government for the use of the Tribe. The participants were selected by making contact with the tribal administration department and asking who would be best to participate in the project from their tribe. The interviews were conducted in person, via email, and by phone. The participants all expressed their inability to use the land as they would like to. There is a strong understanding that the federal government has a fiduciary obligation to support tribal governments and protect tribal trust land and resources that are important to the tribes.

The process to collectively join together to evaluate the barriers that are stalling cultural resource and economic development projects from being completed in a timely

manner should be evaluated to determine how the agencies can better meet the needs of the tribes.



Photograph by the author, Hoopa Valley, California.

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List of Acronyms

- I. National Environmental Protection Agency (NEPA)
- II. California Environmental Quality Act (CEQA)
- III. Bureau of Indian Affairs (BIA)
- IV. Code of Federal Regulations (CFR)
- V. Department of the Interior (DOI)
- VI. Institutional Review Board (IRB) Maryland, University
- VII. Alturas Indian Rancheria (AIR)
- VIII. Hoopa Valley Tribe (HVT)
- IX. Native American Free Exercise of Religion Act (NAFERA)
- X. American Indian Religious Freedom Act (AIRFA)
- XI. National Historic Preservation Act (NHPA)

Chapter 1: Regulation and Native American Tribes

This research was conducted to study the impacts the United States Federal Government cultural resource management laws and federal regulatory process have on Native American Tribes. Tribes who reside on and utilize federal trust lands and receive federal funding are impacted by strict regulations. Title 25 of the Code of Federal Regulations (CFR), is law created by the United States Congress, which describes in detail how federal agencies are to manage an entire race of people, specifically Native American Tribes. Title 25 of the CFR will be referenced throughout this research.

Three Native American tribes were selected for this thesis based on their location and history of managing natural resources or land development projects. In order to gather pertinent information for this research, the Hupa, Yurok, and Alturas tribes were contacted and asked to participate. A questionnaire was developed by the author and approved by the Institutional Review Board (IRB) at the University of Maryland, in College Park. The following is a brief description of the tribes that participated in this project and a description of their current land status. The Hoopa Valley Indian Reservation is located in Northern California and is the largest land base reservation in California. They have approximately 3,700 tribal members and a 12-by-12-mile square of trust land that was designated to them by Executive Order in 1864. The Yurok Reservation is also located in Northern California on a 44 mile stretch of the Klamath River. They have approximately 6,300 tribal members and are the largest Native American Tribe in California. Due to relocation and intense land disputes they did not formally establish government until 1988. They were federally recognized but

not established for many years due to government control. The Alturas Rancheria is a tribe with very few tribal members left. They have under 20 tribal descendants and five enrolled members. They have a small land base in Northern, California but hold several different land tracks (less than 1,300 acres) under trust land status due to adopting other tribal members who did not descend from their lineage. This allowed for land expansion and economic development opportunities.

The Hupa and Yurok Native American Tribes have established forest management programs and both adopted land management plans that are supported by their tribal membership. The third Tribe, Alturas Indian Rancheria, has a unique situation due to the fact their land was historically given to two different tribes and the two tribes later joined together to create one tribe known as the Alturas Indian Rancheria (AIR). At the time of this writing, the three tribal governments do not have their own historic preservation programs or Tribal Historic Preservation Officers (THPOs).

This thesis captures the compliance obstacles on native lands in Northern California and describes what keeps them from managing their land in the manner they see fit. This thesis will help guide conversation to implement changes under the current processes. Additional studies with a much broader group of tribes will need to be conducted in order to gain additional information, and provide sufficient data to analyze the impacts state wide, and nationally. Additional studies are necessary to fully understand the negative impacts the overlapping government regulatory processes are creating for tribes.

When Europeans arrived, most native tribes welcomed them and taught them how to subsist off the land. Europeans maintained their friendship with the natives only when it served their interests and as soon as they grew strong enough, they overpowered the indigenous people of North America. Disease and war reduced the number of natives drastically. Today, many Native Americans throughout the United States live on trust land and is heavily regulated by the federal government. Nearly 315 Native reservations exist in the United States and range in all sizes. Many tribal reservations are remote and have limited resources so they continue to depend on the federal government to support their economic needs (Pevar 2002: 3).

As European settlement, expanded the fights over land exploded. A few of the agencies tribes work with regarding regulation is the Bureau of Indian Affairs (BIA), Bureau of Reclamation (BOR), the State Historic Preservation Offices (SHPOs), and the Environmental Protection Agency (EPA). The overlapping regulatory processes applied to implementing forest management or economic development projects on tribal trust lands can be expensive and time consuming. Many of these laws were created to protect resources but have actually created obstacles for Native American tribes to implement projects by impacting the way the tribes manage their aboriginal lands.

The United States began treaty making with Native America in 1784. Institutional change came and Treaty making was eventually stripped from the powers of the President of the United States by the Congress. Congress implemented the process of approving executive orders with tribes, allowing Congress to reject or accept the negotiated agreements. Treaties are binding agreements between Native American

Tribes, Nations, Rancherias, Bands, etc. The Supreme Court ruling, *Worcester V. Georgia* (1832) recognized that Indian nations are “distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the land within those boundaries.”

According to the United States Department of the Interior’s government web site, from 1778 to 1871, the United States’ relations with individual American Indian nations were defined and conducted largely through the treaty-making process. These “contracts among nations” recognized and established unique sets of rights, benefits, and conditions for the treaty-making tribes who agreed to cede millions of acres of their homelands to the United States and accept its protection. Like other treaty obligations of the United States, Indian treaties are considered to be “the supreme law of the land,” and they are the foundation upon which federal Indian law and the federal Indian trust relationship is based. “On September 28, 1850, Congress passed “An act to authorize the appointment of Indian agents in California.: The law appropriated \$25,000.00 to enable the president to make treaties with the various Indian Tribes in California. Indian agents were appointed as Indian Commissioners for California” (Anderson, Ellison, Heizer 1978: 52).

Congress passed several laws during the mid-nineteenth century in order to increase federal control over Native Americans and assimilate them to white society. The first agency Congress created to administer Native American policy was the office of Indian Affairs, established in 1824. In 1849, Congress transferred this agency to the newly created Department of the Interior (DOI), where it remains today. The DOI administers federal government programs through the Bureau of Indian Affairs (BIA). The

Department of the Interior has a wide range of responsibilities. They are responsible to manage water, wilderness management, regulate territorial governments, manage public parks, handle basic responsibilities for Indians, public lands, patents, and much more (Pevar 2002: 63).

The Dawes Act or General Allotment Act of 1887 granted heads of Indian families 160 acres of land which was called an Allotment. Many Indians who held land in trust were not able to pay the taxes and eventually lost the land. It wasn't until 1920 when John Collier, executive secretary of the Indian Defense Association became Commissioner of the BIA, and immediately employed more Indians in the BIA and encouraged traditional Indian religion and culture. He is remembered by many for implementing the Indian Reorganization Act of 1934 which abolished the Dawes Act/Allotment system and allowed growth of communal systems of tribal land. The formation of tribal governments was encouraged during this time.

The Federal Register Act was passed in 1935 and was a milestone to American administrative law throughout this research. The Code of Federal Regulations, 25 C.F.R. § 83, titled "Procedures for Establishing that an American Indian Group Exists as an Indian Tribe," originally framed as 25 C.F.R. § 54 (1978) will be referenced as a guide to how the Federal Government manages Native American People and their land that is held in trust (Quinn 1992: 1).

Congress authorized and acknowledges Indian tribes cited in 25 C.F.R. § 83. In addition, it has been found in 25 U.S.C. §§ 2, 9. Section 2, a congressionally mandated sub-delegation of authority from the Secretary of the Interior to the Commissioner of Indian Affairs, under which the Commissioner shall "agree to such

regulations as the President may prescribe, have the management of all Indian Affairs and of all matters arising out of Indian relations.” 25 C.F.R. § 83 are Chapters 1 and 2 of Part 230 of the Department of Interior’s Departmental Manual (Quinn 1992: 47-48).

Larson (2005: 5) summarizes:

Tribal sovereignty is based on three principles: first, prior to European contact, a tribe possessed all the powers of any sovereign state; second, European conquest terminated external powers of the tribe, e.g., its power to enter into treaties with foreign nations, but did not affect the internal sovereignty of the tribe, e.g., its powers to govern itself; third, tribes retain internal sovereignty subject to treaties and by express legislation of Congress, construed narrowly to protect tribal interests and interpreted as the Indians would have understood them.

The Indian Reorganization Act (IRA) affirmed the Secretary of the Interior’s responsibility for conservation and economic development on Indian Lands. The IRA did not sit well with the Indian People as the IRA was not able to accomplish what it set out to do.

Self-determination became federal policy under President Richard M. Nixon and was reconfirmed by President Ronald Reagan, under whom the Interior Department sought to give tribes more control without terminating the government’s historic trust responsibilities. In 1975, the United States Congress enacted the Indian Self-Determination and Education Assistance Act, Public Law 93-638. The Act allowed for Indian tribes to have greater autonomy and to have the opportunity to assume the responsibility for programs and services administered to them on behalf of the Secretary of the Interior through contractual agreements (Pevar 2002: 12)..

The treaties issued by the Federal Government were supposed to protect the rights of Native American People and provide continued use of their land, water, and

resources to maintain the quality of life they originally valued. These Treaties have proven to be flawed as they did not take into consideration all other negative impacts that would arise. Overpopulation and overuse of the land continues to destroy the resources these tribes rely on for subsistence, traditional, and economic purposes. A premise of this thesis is that each of the three tribes interviewed for this study had a substantial amount of land taken from them by the Federal Government.

In 1978, Congress passed the American Indian Religious Freedom Act (AIRFA). AIRFA'S purpose was to state a congressional policy of protecting and preserving the inherent right of Native Americans to "believe, express, and exercise: their traditional religions, including but not limited to access to religious sites. Since its passage the United States Supreme different Court has interpreted AIRFA as a policy statement that confers no cause of action to enforce its provisions" (Neal-Post 1994: 443). There was a new bill introduced in 1993 called the Native American Free Exercise of Religion Act (NAFERA), which also addresses religious freedom by Native Americans in four different areas of concern (Neal-Post 1994: 444).

Neal-Post elaborates on the Sacred Sites and Federal Land Management process, otherwise known as the NAFERA Act of 1993 by describing the long process Native American tribes and cultural practitioners must go through in order to protect their religious sites from federal and state projects. Native American tribal people use their land for religious purposes. Much of their aboriginal land was taken by the Federal Government, leaving Tribes with a small portion of their aboriginal land base to practice their historical traditions.

Under Section 106 of the National Historic Preservation Act (16U.S.C. 470 et. Seq.), an agency can continue implementing their project as long as the agency can prove they complied with the notification process and can document that they consulted with the appropriate tribe and mitigated the undertaking, (2), the governmental agency engaged in the Federal or federally assisted undertaking shall immediately discontinue such undertaking in the vicinity of the disturbance to traditional Native American religious exercise, until the agency performs the duties described in paragraphs (3) and (4) Paragraphs (3) and (4) state, the government agency must “consult with any interested party, including Native American practitioners with a direct interest in the Native American religious site in question, concerning the nature of the adverse impact and alternatives that would minimize or prevent an adverse impact...*consultation period* (Neal-Post1994: 474)” Although (4) provides a “no action alternative” (Neal-Post 1994: 475) the agency still obtains the final decision and outcome of the proposed project (Neal-Post 1994: 475).

During the tribal interview process it was described by the participants how tribes are trying to manage the land by using ancient historical knowledge that once left the land, water, and animal life flourishing. Getting back to the traditional way of managing their land is a much bigger and complicated process.

The following Theory Chapter describes the plenary powers the federal government follows to legislate Native American Tribes. An overview is presented of what the Framers of the Constitution were aiming to accomplish while designing regulatory laws that would help govern the Native American People. Millions of Native Americans were killed or removed from their land forcefully so the new settlers

could prosper off the land. The settlers treated the Native Americans as if they were useless and in the way of development. After many years of trying to annihilate the Native Americans without success, the federal government began to develop laws that would heavily regulate them. The chapter describes the connection between the land and native people.

The History Chapter provides background of federal government agreements with Native American Tribes and the Treaty making process that has had impacts on the way they are able to manage their tribal trust land today. The history of the landscape and the way the Native American People manage land today is much different from the pre-contact conditions for Native Americans. Settlers tried to eradicate the Native's way of life and force them into living, what settlers would call, a civilized life that was lead by a foreign religion called Christianity. Forced removal of the tribes from their aboriginal territories caused starvation and left them with little land to provide subsistence. Today, Native American People express the need to be able to manage their land through traditional and ecological knowledge and to have the federal government limit the amount of regulatory demand enforced on them.

The Methods Chapter is about the archival research that was conducted in order to educate the reader about the regulatory development process and impacts to the Native American Tribes that took part in this thesis study. Interviews were conducted with participants from three Native American tribes and their staff. A questionnaire was developed and used to conduct interviews to obtain data. Data was generated and examined to understand the impacts to the participating tribes.

The Results Chapter provides information about the impacts regulatory law has had on Native American People and the land they manage. The chapter describes what tribes face in order to conduct land development, traditional and ecological management, and economic development on tribal trust lands, results of interviews and understand the personal impacts to the Native American People.

The Analysis Chapter displays data collected and how it correlates to the thesis question of how the federal government regulations impact Native American tribes. The analysis chapter gathers data and compares the tribe's experiences to identify commonalities or similarities.

The final chapter describes the participants' understanding of federal regulations that impact management of tribal trust land, and presents the conclusions of this thesis.

Chapter 2: The Powers that Govern Native American Tribes

Congress has plenary power to legislate the form of government Native Americans regulate themselves under. Congress has plenary power to determine whether a “tribe” does nor does not exist, and whether a Native American is or is not a citizen of it. The United States has plenary power to control the property rights and relations of Native Americans. “The resultant law of the United States has been fickle in its concession of rights to Native Americans, alternating between assimilation, paternalism, and exclusion” (Savage 1991: 61).

By delving into the minds of the Framers of the Constitution and evaluating their intent to constrain Native American rights, your mind may grapple with itself while trying to justify their motives. This complacent course that justified the rightness for Europeans to exterminate or regulate, to the point of control over an entire race of people has left an unsettling aroma in the air for Native American people. This Chapter will begin to decipher the Framers intent to manage Native American people, and will set out to construct an understanding of the ongoing negative impacts to them; from the intricate laws that unwove a traditional lifestyle to the overwhelming impediments and festering anger that continues to linger in Native American communities.

In 1787, the statesmen assembled in Philadelphia, recognizing the Declaration of Independence had already complained about Native Americans, although the Articles of Confederation had conferred authority with respect to Native Americans. The Virginia Plan presented at the Federal Convention in 1787 did not mention Native Americans among the resolutions. The debate that ultimately yielded to the “Great Compromise” was the deliberations about the nature of representation in Congress and

whether to adopt the seventh resolution (which excepted “Indians”), however, Native Americans were not mentioned once as people to be represented. The original understanding of the national power over Native Americans within the jurisdiction (not limits) of a state and taxed by that state would augment that state’s proportions of taxation and representation, although, the three-fifths clause did not require members of Congress to represent Native American interests. The formula left out Native Americans so they were not actually represented. The three-fifths compromise was an agreement reached at the 1787 U.S. Constitutional Convention. The count of slaves through this compromise would help determine the number of seats in the House of Representatives.

At that time, the national legislative power was limited to commerce and did not extend into other Native American affairs. Mr. James Madison put forth a proposal to regulate affairs with the Indians but this language was not accepted. “In 1781, the states had transferred to the Continental Congress the “sole and exclusive right and power” to enter into treaties with Native Americans. Between 1781 and 1787, in spite of article IX, states had regulated and confiscated Native American lands, had warred with Native American tribes, and had engaged in commerce with the Native American Tribes (Savage 1991: 79-81).

What could have happened to Native Americans during the framing of the Articles of Confederation could have gone terribly wrong if proponents like Mr. Madison had gotten his way. At one point, Mr. Madison proposed giving the States powers over Native American commerce instead of the Federal Government. Some argued that the colonies should not vest in Congress the power to manage every affair

concerning Native Americans, including trade, because the trade was profitable to the individual colonies (Getches & Wilkinson 1986: 269).

Under the tenth amendment, Native American tribes and nations would not be subject to the jurisdiction of states or the states in Congress assembled, although states have exercised power over Native Americans and Native American lands, without authority, in taxes, civil jurisdiction, criminal matters, zoning, hunting and fishing rights, water rights, religion, and general police powers (Savage 1991: 88). Native Americans had no Anglo-American conception of property, therefore; having no conception of the word sovereignty. The United States attributed sovereignty to them in order to validate, within the Western legal tradition, their grants and cessions of land by treaty to the United States (Getches & Wilkinson 1986: 269).

Institutional change and relative power did not cross paths with Native Americans until the period between 1784 to 1911. Congress took away authority of the President of the United States to negotiate Treaties directly with tribes. Between the War of Independence and the turn of the twentieth century, approximately two million square miles of land were transferred from sovereign territory under control of Native Americans to the United States. Negotiating treaties became a legislative process in which Congress was now involved (Spirling 2012: 84).

Benjamin Madley describes a gruesome picture of what genocide, sanctioned and facilitated by state and federal officials looked like between 1846 and 1870. An 1890 historian by the name of Hubert Howe Bancroft called the killings “one of the last human hunts of civilization, and the basest and most brutal of them all.” Sherburne F. Cook wrote the very first major study about genocide. Through this study he was

able to conclude the easiest way to get rid of the Northern California Indians was to kill them off. According to Cook, this was the adopted standard for many years to follow. At the 1948 United Nations Convention of the Prevention and Punishment of Crime of Genocide it was specified that, “persons committing genocide or any of the other acts enumerated...shall be punished (Madley 2016: 450).

In 1851 and 1852, federal agents signed eighteen treaties with 119 California tribes. In 1853, U.S. senators repudiated these treaties and created five military reservations not exceeding 25,000 acres each. The land was not granted to tribes and the mass killings continued while the federal authorities looked the other way. “By 1863, the federal government had given California more than \$1 million for its militia campaigns...Elected California officials were the primary architects of annihilating Indians” (Madley 2016: 459).

The United States never fully conquered the Indian nations. It has been said by many that Native American people are strong and resilient to have survived what the federal government put them through. “Their sovereignty preexists the United States; it was diminished by the exercise of federal power but never fully obliterated” (Singer 2014: 3). Although most Treaties were broken by the federal government many of these agreements resurfaced through Executive Orders that now regulate the current relationships between the federal government, its agencies, and the tribes.

The government retains tight controls over Native Americans through regulatory laws that continue to negatively impact trust land the Native American tribes retain today. Tribes have been trying to hold on to their historical teachings that incorporate living in balance with the earth. In order to do this, tribes need to be able

to implement land management and development projects on their land in a timely manner. *On the Evolution of Social Stratification and the State* by Morton H. Fried proposes an evolutionary model of society comparing contemporary societies at different levels of development to try to reconstruct the process by which simple societies evolved into more complex forms. These complex societies of the Hupa, Yurok, and Alturas have evolved over thousands of years.

The Hupa and Yurok tribes are heavily engaged in traditional forest management practices and have continued their traditional ceremonies since time immemorial. The Alturas Tribe was left with almost no land to manage for traditional purposes and the small land base that the Alturas Tribe does have is used primarily for economic development purposes for the benefit of the tribal members. The Hupa and Yurok continue to hold on to their ancient religion but are limited by strict regulatory processes. The tribes have always believed their religion is intertwined with the ecosystem and live a religion based on symbolic living, which guides and teaches tribal members how to be good people according to societal norms (Figures 1-6). The rules of their religion come from the forest, rivers, streams and animal life. They rely heavily on the health of their environment to keep them healthy, and suffer as a society due to a lack of resources. This thesis describes the ways in which each tribe has been negatively impacted by their limited ability to manage their land in the way they see as healthy or beneficial to their people.



Figure 1: House. Photograph By the Author



Figure 2: Hupa Tribe Members at a Deer Skin Ceremony. Photograph By the Author.



Figure 3: Hupa Children's Regalia. Photograph By the Author.



Figure 4: Hupa Tribe Members at the 2022 Jump Dance for the Karuk Tribe. Photograph By the Author.

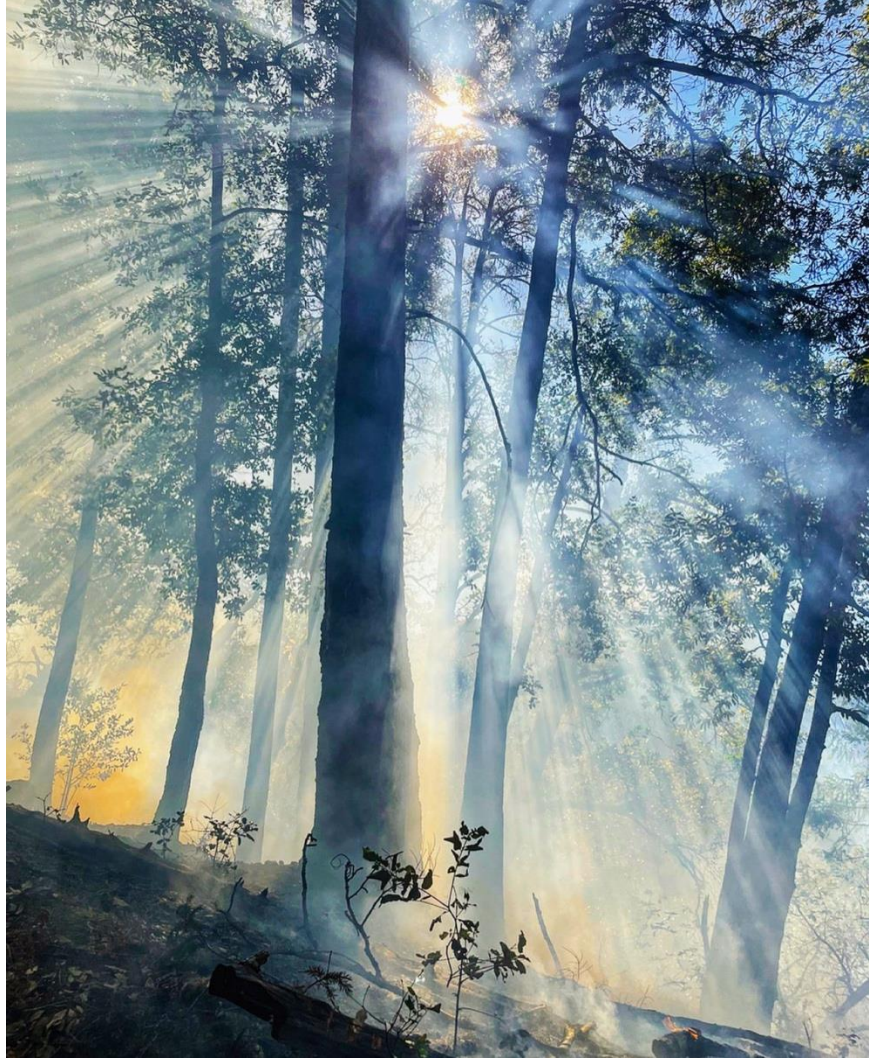


Figure 5: Traditional Hazel Burn in 2020. Photograph By the Author.



Figure 6: Treated Hazel Stand Under Madrone and Oak, with Children Gathering Hazel for Baskets. Photograph by the author, 2002.

Claude Levi-Strauss (v. 1908) began with the assumption that culture was, first and foremost, a product of the mind. He believes the underlying processes tying cultures together are to be found in bits of information that provide messages about the structuring of society. Societies are theorized as populations of people living in organized groups with social institutions and expectations of behavior just like the Hupa, Yurok, and Alturas tribes. Scientists are attempting to evaluate what the past could tell us about our future and why the original course set out by the United States Government has lead this tribes and their societies to a place that is degrading their ecosystem (Savage 1991: 57-59). Tribes have been faced with degrading ecosystems and have had severe social impacts to the debilitating federal structures put in place to manage native tribes.

Leslie White, in the *Energy and the Evolution of Culture*, describes how living organisms may be looked upon as engines which operate by means of energy derived directly or indirectly from the sun. The civilizations, or cultures of mankind, also, may be regarded as a form of organization of energy. Culture is an organization of phenomena-material objects, bodily acts, ideas, and sentiments-which consists of or is dependent upon the use of symbol...Culture is a kind of behavior. And behavior, whether of man, mule, plant, comet or molecule, may be treated as a manifestation of energy.

Chapter 3: Federal Government Agreements with Native American Tribes

Treaties are binding agreements between Native American Tribes, Nations, Rancherias, Resighini's, Bands, etc. The Supreme Court ruling, *Worcester V. Georgia* (1832) recognized that Indian nations are “distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the land within those boundaries.” The court also acknowledged the sovereign nature of Indian nations as established and recognized through treaties with the federal government. The United States began treaty making with Native America in 1784. There were almost 600 Treaties signed between the Revolutionary War and the turn of the twentieth century (Spirling 2012, 84).

The profound treaty process and the consequences they continue to have on Native American people are of interest to many. The history of the landscape and its management by the Native American people prior to colonialization changed drastically once the federal government formed and took control of Native American affairs. According to the 2000 United States Census, there are approximately 2.5 million Native Americans living in the present-day United States (Spirling 2012, 85).

The United States Government was determined to move West and create more space for the white settlers and to also decrease conflicts between the settlers and the tribes. In 1851 the United States government set out to restrict the tribes to designated land in order to limit confrontation with the whites (Calloway 2008: 300-301). Americans sought to eradicate the Indians' way of life at the same time they took away their land. Missionaries and other religious groups believed it was their responsibility

to “civilize” the Indians by demolishing their traditions and culture by transforming them all to Christians.

The United States government placed most of the Western Indians on reservations from 1850 to 1890, and it was during this turbulent period that missionaries established permanent missions among them. In addition to their task of converting the Indians, Catholic missionaries had to help them adapt to a new economy, land boundaries, diet, social rules, marital rules, morals, and political systems...With the movement of white population into the American West, Indians faced some of the most rapid and dramatic cultural changes in history (Enochs, 2009: 71).

Seneca chief Red Jacket said the Indians may be inclined to accept Christianity if the Christians they were seeing did not lie, cheat, be drunk, and commit theft (Wilkins, 2007: 3-5).

Treaty-making by the Federal Government in California from 1851-1852 was a period following the annexation of Texas in 1845. “The addition of Texas, the adjustment of all conflicting title to Oregon Country south of the 49th degree of north latitude by treaty with Great Britain in 1846, and the acquisition of New Mexico and Alta California by the Treaty of Guadalupe Hidalgo with Mexico ratified May 30, 1848, added an area more than half again as large as the 29 states and territories lying east of the Rocky Mountains” (Anderson, Ellison, Heizer 1978: 1).

There are currently 367 treaties with undisputed status in the United State. These treaties were negotiated by the President and ratified by the Senate under article II of the Constitution. Officials frequently used “force, bribery, deception and threats, among other things, to convince Indian leaders to sign land cession treaties (Satz 1976, 84). Indian treaties have the same force and effect as federal statues and if the states or agencies violate these treaties, it is considered a violation of federal law (Pevar, 2002: 53).

Native American treaties and any agreements with the U.S. government allowed for an extraordinarily detailed record which correlates between a rising superpower and a race of people who now suffer from disproportionate social deprivation and lack of opportunities (Spirling 2012: 95).

The federal Constitution took control over Indian Affairs in Congress through a clause which gave Congress power to regulate commerce with the Indian Tribes. Congress delegated the management of Indian affairs to the War Department. In 1824, the administration of Indian affairs wanted to consolidate the Secretary of War affairs, and organized the Bureau of Indian Affairs. This agency was to work under the Secretary of War and manage all Indian affairs and all matters arising out of Indian relations. Congress again enacted more oversight due to the growing concern with Indian affairs. In 1849, Congress transferred Indian affairs from the War Department to a newly created department called the Department of the Interior, which oversees the Bureau of Indian Affairs (Anderson, Ellison, Heizer 1978:1-10).

During the 18th and 19th Century settlers were realizing how valuable the land was and soon implemented the Indian Removal Act of 1830, signed into law by President Andrew Jackson. The Act resulted in millions of people being forced to leave their aboriginal territory. Forced migration displaced hundreds of tribes from the land on which they relied for survival. Throughout this period there were several wars that killed thousands, if not millions, of Native Americans. This created a pathway for the United States Government to gain control of Indian land. “In many cases, tribes were fractured and reconstituted, forced onto reservations with little regard for tribal identity or respect for traditional homelands. Economic, social and political systems that had

served tribes for so long were lost as individuals, families and communities struggled to adapt to unfamiliar climates, surroundings, neighbors, political regimes and economic conditions (The Harvard Project on American Indian Economic Development 2007: 14). In 1887, Congress instituted the General Allotment Act which put pressure on the Native Americans to assimilate. They were provided allotments of tribally owned reservation lands in hopes of Native Americans to break up communal life and to make them individualistic farmers in order to “civilize” them. The Allotment era allowed additional white settlement on tribal land by opening tribal lands up to white settlement. During this time period tribes were losing their ability to maintain traditional living amongst one another and began to become isolated from village life, as is described in the U.S. Supreme Court decision in *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). Only Native Americans who accepted the division of tribal lands were allowed to become U.S. citizens under the General Allotment Act, otherwise known as the Dawes Act (Kickingbird 1975: 2).

Franklin D. Roosevelt appointed John Collier as Commissioner of Indian Affairs in 1933. Collier did not support the federal government’s handling of Indian policies and declared, “ No interference with Indian religion life or expression will hereafter be tolerated. The cultural history of Indians is in all respect to be considered equal to that of any non-Indian group.” Congress then passed the Indian Reorganization Act (IRA) hoping to assist them to pull away from oppression (Pevar, 2002: 12)

The Indian Reorganization Act (IRA), Section 16, passed by Congress in 1934, reads

Any Indian tribe...shall have the right to organize for its common welfare, and may adopt an appropriate constitution and bylaws...Once approved by tribal vote and the Secretary of the Interior, Constitutions can be revoked only by Congress or another vote of the tribe. Self-governance of Indian tribes is not based solely on the IRA. Tribes have unextinguished, inherent powers.

The Chief Justice, John Marshall, clarified these powers when he ruled in Worcester v. Georgia (1832) that “The Indian nations had always been considered as distinct, independent, political communities...(Dobyns 1948: 35). Under the United States Constitutional provision, Congress was provided the right “To regulate Commerce with foreign Nations, and among the several States, and with Indian tribes. This constitutional delegation of power by the states to the Federal government removes the state from direct oversight of Indian government with Indian Tribes” (Dobyns 1948: 36).

Tribal powers are inherent powers of limited sovereignties that still exist today. “Asserting tribal control over endangered species management on the reservation is not so much about wildlife program administration as it is about safeguarding a tribe’s own approach to an authority in protecting the environment on their lands” (The Harvard Project on American Indian Economic Development 13).

In 1934, Congress reversed its decision and tried to eliminate land removal by ending tribal land allotments. The Indian Reorganization Act (1934), extended the trust period for existing allotments, prohibited lands from being taken away from tribes without their consent, and authorized the Secretary of the Interior to accept additional

tribal lands in trust and to proclaim new reservations on those lands. The Bureau of Indian Affairs established a Native American hiring preference, there were revolving loan programs for tribal development and set up specific tribal business charters under Section 17 of the Act. Most important, the Act recognized tribal governments and supported tribal self-government by allowing tribes to adopt constitutions under Section 16 of the Act (Indian Reorganization Act [1934]).

The Bureau of Indian Affairs currently manages a webpage that states the following:

The mission of the Office of Trust Services is to protect, develop, manage, and enhance Indian trust resources for the benefit of American Indian and Alaska Native peoples and expand economic opportunities through effective trust management that recognizes and supports Tribes' self-governance and self-determination.

As a Native American woman who has witnessed the lackadaisical work ethic of many BIA employees and has witnessed the negative impacts to my people on the Hoopa Reservation, the above language has not always been the objective of the Bureau of Indian Affairs. On July 19, 1973, Senator Abourezk introduced legislation that stated (Kickingbird 1975: 245),

Throughout the history of Federal-Indian relations there has never been a comprehensive approach by the Congress and the Executive that dealt effectively with Indian problems and, at the same time, efficiently fulfilled Indian needs. As a result, Indian policy was shaped by a fragmented piecemeal approach which served to inhibit, rather than promote Indian development and has directly led to the deep despair and frustration recently vented in the siege of the Bureau of Indian Affairs and the occupation of Wounded Knee, South Dakota. I firmly believe that the time has come for a thorough review of these past policies, to see where they have proved inadequate so that a more comprehensive approach can be attempted.

Time has elapsed and Native American Tribes are still suffering from a broken system that continues to stall projects. Tribes are trying to accomplish what they call traditional land management practices and implement economic development projects that will help improve the lives of their people while being managed by outdated federal laws and agencies.

Chapter 4: The Process of Collecting Data from Native American Tribes

The Methods Chapter is about the archival research that was conducted in order to understand the regulatory development process and impacts to the Native American tribes. Interviews were conducted with participants from three Native American tribes and their staff. A questionnaire was developed and used to conduct interviews to obtain data. Data was generated and examined to understand the impacts to the participating tribes. Four tribes were originally selected to be part of this project. One tribe was not able to get formal approval to conduct interviews and release information in a study by the time this project started. Therefore, one of the four tribes was removed from the project due to time constraints. The three remaining tribes are the Hupa (AKA Hoopa Valley Tribe), Yurok, and Alturas Indian Rancheria (AIR).

The participants were selected by making contact with the tribal administration department and asking who would be best to participate in the project from their tribe. Two of the tribes chose to participate by having the Tribal Vice-Chairman participate in the interview. The two Vice-Chairman volunteered their information as they had multiple years of experience conducting development on trust land and working in tribal politics. One tribe recommended reaching out directly to their forestry program and to meet with their staff. I set up a meeting with the forestry director and he included several other staff members in the meeting. I introduced the project and explained what my thesis was about and asked who would be best to participate in interviews with me. There were five names provided but I was not able to collect the interview from two potential participants at this tribe as they got too busy with work and travel. There were

also concerns with COVID-19 by some of the elder committee members who serve on a cultural committee at the Hoopa Forestry Department, and they could not finish the interview. I was not able to include all of the participants due to scheduling and the fear of getting sick, but was able to retrieve three interviews from this program. The participants from this department manage all forest management activities on the Hoopa Reservation and/or serve on the department's cultural committee. Archival research was conducted from scholarly material. The interviews were used to find correlations between the tribes and their land management obstacles.

ARCHIVAL RESEARCH

The methodologies used to conduct this thesis are heavily based on research done through archival resources managed by tribes. The thesis includes archival and scholarly research carried out through JSTOR and the University of Maryland library. Additional research material was gathered from the Bureau of Indian Affairs webpage, tribes that were interviewed and answered an approved questionnaire as part of this thesis, project data released by tribes with their consent. *American Indian Law Review* written by Mark Savage and published by the University of Oklahoma College of Law was referenced broadly as this book gave insight to the framers of the Constitution and how they saw the Native Americans fitting in to society.

INTERVIEWS

This thesis includes analysis of data that Native American Tribes have accumulated through completed and/or unfinished land development projects. I will be basing my findings on research done by working with three tribes (Hoopa, Yurok, and Alturas). I

worked directly with tribal departments and/or land management staff and land developers who manage projects on tribal trust land(s). I conducted interviews with forest management department staff, land development staff, and staff who engage in project development.

For this thesis, I designed a questionnaire that will asks questions about projects that have been implemented by these three tribes, in order to understand the type of land management projects they have already completed. If the projects were not completed, I will acquire information through the interview process to find out why not.

A part of this thesis will be to analyze the laws and regulations established by the federal government to regulate Native American People/Tribes. The thesis includes an analysis of laws and regulations under the Department of Interior and Bureau of Indian Affairs. In addition, this thesis seeks to understand the process by which Native American Tribes are regulated. Case studies are used as verbal examples and have been provided by either one or more of the three tribes included in this project.

The interview process that was followed for this thesis includes a list of questions approved by the Internal Review Board (IRB) at the University of Maryland, College Park. The interview list consists of six different categories and is titled Native American Forest Management Project Interview Questions. The interviews were completed by two participants filling them out themselves, and the remaining were done through an interview process. One interview was recorded as it was several hours long and the participant asked that it be recorded and transcribed so he could review

what he said in the interview. I later transcribed the interview and received his approval to document what he stated.

The Sections of the questionnaire are as follows:

- I. Date
- Time
- Place of interview
- Field Code Number
- Name
- Tribal Affiliation (if any)

*Names were not used in this thesis they are associated to a Field Code Number for the purpose of this project and to protect staff information.

II. GENERAL INFORMATION

- 1. What is your occupation?
- 2. How long have you worked in this position?
- 3. What are your job responsibilities?
- 4. Do you work in a specific department or with several other departments?
- 5. Are you familiar with implementing forest management or Native American land management/development projects on Tribal Trust Lands?

III. TRIBAL TRUST LAND MANAGEMENT/DEVELOPMENT

- 1. What do you know about Tribal Trust Lands?
- 2. Do you manage projects on Tribal Trust Land?

3. What type of project(s) do you manage or participate in?
4. Which regulatory/compliance laws are you familiar with or required to operate under?
5. What regulatory/compliance laws are you implementing projects under?
6. How do these regulatory/compliance laws influence your project(s) outcome?
7. What agencies do you work with regarding regulatory/compliance law?
8. What is the timeframe to complete the regulatory/compliance law process?
9. What is the legal timeframe an agency has to review your project and how does this impact the outcome of your project(s)?
10. Are there impacts to untimely processes?

IV. TRIBAL TRUST BACKGROUND

1. What does Tribal Sovereignty mean?
2. What are the benefits to Tribal Sovereignty and Native American Tribes?
3. Are there negative impacts to tribal sovereignty?
4. What type of funding do you receive to implement your project(s)/land development?

5. Are there sufficient resources available to fund your land management project(s) or do you fund them yourself? If so, how do you fund them?
6. Are there additional expenses associated to managing Tribal Trust Land?

V. IMPACTS, OUTCOME, AND BENEFITS

1. What is the current status of your project(s)/land development?
2. What influenced the outcome of your project(s)?
3. Was this outcome positive or negative to the tribe? If so, in what manner and what are the impacts to the tribe?
4. Are you working with specific agencies to influence a particular outcome? If so, what is their response and how does it impact the tribe?
5. Who benefits from the project(s)/land development?
6. How do they benefit?
7. Who is impacted when a project or land development is not implemented due to the inability to work out regulatory/compliance laws?
8. How are they impacted?

VI. COLLABORATION

1. Do you work with any agencies to discuss the pros and cons of regulatory/compliance laws that impact your projects? If so, are

there proposed changes that are being made by you or the agency as to how to implement project(s)/land development in the best interest of all parties?

CORELATIONS

I conclude the methodological process by examining the information gathered through the interview process to find correlations, as part of my analysis. The correlations are graphed in a manner that shows similarities between the three tribes and the outcome of their land management/development projects. Analysis of the data will be presented to understand the amount of negative and positive outcomes of the land management/development projects, and who is impacted. The land management/development process will be analyzed based on traditional land management to help readers understand how government regulations/laws has changed the process. The data will be focused on land management regulations/laws that impact the Native American People.

This thesis will set out to show correlations between the federal government agencies, their regulations/laws, and the impacts they have on Native American People to this day.

Chapter 5: The Impacts of Regulatory Law on Native American People

Personal interviews and questionnaires were used to capture pertinent information to help people understand how regulatory laws negatively impact tribes and their tribal members. The questionnaire provides information that explains how federal compliance laws and regulations continue to plague Native American people socially and economically.

When participants were asked what tribal trust lands were, Participant number 0-001 stated that when the federal government forced their people to leave many places that once belonged to them they were left with only around ten percent of their aboriginal land base. He said the Yurok Reservation is now only one mile on each side of the Klamath River for 40 miles. They currently have around 4,820 acres of Tribal Trust Land that is regulated by the federal government. Participant number 0-002 stated that their tribes land is all held in Trust by the Federal Government and stated the tribe is regulated under 25 CFR and they adhere to all of the laws under this Title. Participant number 0-003 stated the land managed by the Hoopa Valley Tribe is all land held in Trust by the federal government. Participant 0-004 stated tribal trust lands are held in trust by the federal government for the use of the Tribe, meaning the government technically “owns” the legal title of the lands but the Tribe holds the beneficial interest. Part of the trust responsibility on the United States Government includes a fiduciary obligation to support tribal governments and protect tribal trust lands and resources. Participant number 0-005 stated “it is land that we live on and it’s the land that we have left after the government took it all.”

When asked what regulatory/compliance laws the tribes are implementing projects under, participant number 0-001 responded to the question by saying,

We manage projects within our reservation trust lands and I understand how the Bureau of Indian Affairs (BIA) works. The entire reservation is under the auspicious or jurisdiction of the BIA. Even though we have a lot of fee land within the tribe, even the fee land, fee simple land is under jurisdiction of the BIA so it makes it complicated for the tribe to do projects. We have several land management projects we are doing. We work with our cultural fire management to do cultural burns, we work with the forestry department to do timber harvest plans, as well as prairie restoration plans. We are currently under a forest management plan right now that the BIA runs but we are drafting our culture re-adaptive land management plan and that will replace our forest management plan. We manage three major kinds of land management practices, culture, fire, prairie and timber harvest and it is all under the jurisdiction of the BIA because it is our land held in Trust by the BIA.

Participant number 0-002 stated the Alturas Tribe was only required to adhere to federal laws because they are a Tribe developing on Tribal Trust Land. “I built a gas station and complied with all federal laws that are required of me.” They also comply with the EPA, BIA Title 25 CFR, National Indian Gaming Commission, California Gambling Control Commission (CGCC), Alcohol and Tobacco Fire Arms (ATF), Tobacco Trade Bureau (TTB), and the Alcohol Beverage Control (ABC). Participant number 0-004 stated most of the Hoopa Valley Tribe’s regulatory/compliance laws all tie back into Title 25 CFR 163, and the Planning Department at Forestry mostly deals with satisfying all NEPA requirements for environmental compliance under the CFR (e.g. proposing projects eligible for Categorical Exclusion or preparing Environmental Assessments for approval by the BIA).

When asked how these regulatory/compliance laws influence your project(s) or the outcome of your project participant number 0-001 stated,

The regulatory compliance laws have a huge influence on how the Yurok Tribe develops our projects, as well as how we implement the projects. All of the BIA regulatory compliance issues combined with the state regulatory compliance issues really make the process challenging. These processes, at a foundational level, don't really understand traditional land management practices. The vast majority of the regulatory compliance issues on both the federal side and the state side are geared towards commercial regulations and drive everything toward an area that doesn't fit our needs as a tribe. Also, this process adds several layers to the planning process where the Yurok, being a self-determination tribe, we have our own regulatory system. We have our own foresters, biologists, our own compliance systems, planning process and as we start to develop our projects, we start with our core value of traditional land management. We go through our internal process for review and then we have to conduct the work again with different agencies. After that, when we go through the BIA process, we have to go through the process of proving compliance all over again. This is the same for the process we go through when we do state projects.

Depending on the project there can be additional layers to meet regulatory compliance. We have to go through the project again to make sure it lines up with the next agencies regulatory process. We are stressed to comply with project timelines and requirements that each of those agencies have. Each of the federal agencies all have their own separate departments as well and we have to work through each one of them so we are kind of at the mercy of the agency. For instance, the BIA in our region always seems to imply they are understaffed and underfunded and where we are at in the queue for our projects, the tribe never knows. We have no say on how fast, or how quickly the project be processed. We don't ever know how fast a project will take to go through the review process. The tribe is 96% grant funded. We are under the weights of implementing projects centered around what the funders want us to do and then we have to make that match the federal regulations and the BIA controls. We don't have a lot of discretionary funds to do what we want. Our compact dollars that we receive from the BIA are very limited, they barely cover our base needs. Our base role was originally at 2300 tribal members and we are currently at 6600 members. The compact funding we get from the BIA is limited and we have to divide it between our natural resources department, education, social services, police fire, council operations, as well as our administration staff.

Participant number 0-002 stated,

For several decades the BIA tried to stop me from developing on my trust land. They used every reason they could come up with to stop me.

The BIA is supposed to be our trustee and help Native American People overcome political bureaucracy but instead they are constantly using personal judgements to decide whether or not a project will get approved. In the end, the regulations they used against me have not completely stopped me from developing. Although the BIA has tried to use Title 25 CFR (public domain allotment look up) against me to impact my projects, they haven't been able to stop me because I am not violating the law. People made complaints that I was developing illegally. The BIA came to my land and tried to stop me from developing my Trust Land, but in the end, they discovered I did not break any laws. I had to file many lawsuits against the BIA. Kevin Bearquiver, who was the acting Superintendent of the BIA and told me, "you will never get a lease approved. I am going to shut you down."

The BIA was putting up road blocks from the beginning they said the land was too fractionated and that it had to be probated. I started buying land owners out. I paid them and had them transfer the land through the BIA process into my name. The BIA got upset at me and said I was forcing them to sign paperwork against their will. I started bringing people to the BIA office and had people sign over their gift deeds in front of Carmen Focio, who was a BIA staffer helping the agency create obstacles for me to use my family Trust Land. I addressed the fractionation problem by purchasing through gift deeds of co-owner, consolidated the land the best I knew how, and I felt the BIA took it personal and got upset with me. I was paying my family members two to three times the value of the land so I could obtain enough land to develop it.

Participant number 0-003 stated the timeframe to complete the regulatory/compliance law process for a project is around six months if the project requires an environmental assessment. Participant number 0-004 stated the process is highly dependent on the type of project. For example, to satisfy NEPA requirements, smaller projects that are eligible for Categorical Exclusion have sometimes been reviewed and approved within one to two months while Environmental Assessments require a more in-depth review and can take much longer (clarify how long).

When I asked about the legal timeframe an agency has to review a project and how does this impact the outcome, participant number 0-001 stated,

The timeframe the agencies have to review our projects impacts the work. Most of the timelines are staggard. None of them are hard and fast with no deadlines for completion and there is no real way that we can push or force the project evaluation process to be completed in a timely manner. There are always loopholes in the system that can start the process over again and it's the same with the state process as well. Since we have to comply with both of them, it puts a huge amount of stress on our implementation, our prairie restoration and our cultural fire are extremely time dependent because there is a certain time that we want to be burning.

No agency has a hard, fast deadline to complete our land management applications. Our traditional knowledge tells us when we are supposed to burn. The BIA, States, and Federal government all tell us when we can burn and it does not work out with our traditional knowledge. When we wait for the state process to find that window of opportunity to complete a burn, it doesn't mesh with the environmental window of opportunity. Every year we have to wait for what feels like this perfect needle to get threaded to put fire on the ground for land management purposes. Part of our reservation is in the coastal zone and there are many endangered species we have to consider. We understand the importance of the endangered species but the compliance process hinders our process to manage through traditional and ecological knowledge. This adds more restricting layers to complete what we are trying to accomplish. We understand the need for protections of endangered species The problem is how the we go about addressing the problem. The single species management plan should look at the entire ecosystem to benefit the single species instead of looking at single species management. We only look at that species and sometimes that doesn't line up with the overall forest health of forest health and ecology. The timelines for EA's, EIR's, ES's, and others are not in any of our control. It all has crazy timelines to complete all of it. There are huge negative impacts to the tribe.

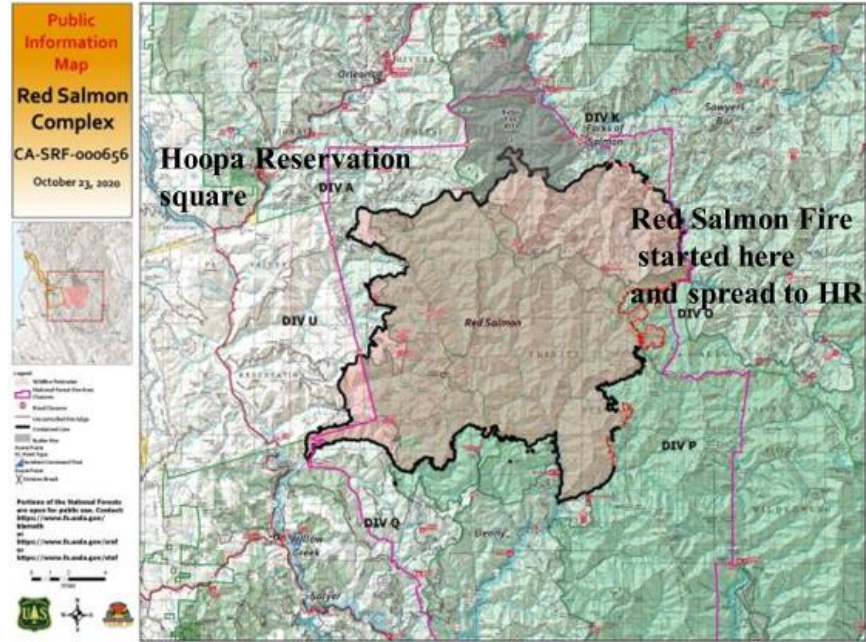


Figure 7: Diagram Showing Extent of Forest Area Burned During the Red Salmon Wildfire in 2020. Public domain.



Figure 8: Wildfire in Untreated Land Northeast of Hoopa Reservation with Long-term Devastation to the Land and Threat to the Community. Photo by the author.

Participant number 0-002 answered by saying,

My land development project has been going on for over 20 years and the business lease is still unsettled with the BIA. There are timelines established under Title 25 CFR but the BIA gets away with responding before the timeline runs out but does not provide approval, just another obstacle to try to get over. They have excuses why things can not get be done in the manner requested. The process to get things done is always drawn out for years and finally people give up. I could have given up several times but I kept paying my attorney to fight for my rights to use the land. I am now using the land without an approved business license. I opened a gas station on my trust property and am waiting the day for the BIA to issue a cease and desist. The impacts are loss of economic development opportunities, a loss of money spent on attorneys, loss of time, loss of educational and housing opportunities for tribal members due to spending funds on attorney fees, and uncertainty of the future of tribal members and descendants.

There have been three generations of unsettled problems with this land. Three generations have not been able to develop this land. If I did not personally have my own business and money to pay for attorneys to fight the BIA, this probate issue and inability to use the land would probably never be resolved. I am currently forcing the issue with the BIA so I can use the land to help Native American People.

If you inherit Indian land that is fractionated, you should be able to use it. The BIA should partition the land. The BIA will not partition if there is a probate. I asked for a lease and they said no you have to determine the value of the land first. The BIA said they had no money to determine the value. I then paid for the appraisal and then the BIA would not accept that appraisal. They gave me three people to chose from. I selected one. The owner of that company had a Son, the son did the appraisal as a partner of the business and the BIA would not accept it because they said I should have had the Dad conduct the appraisal because his name is on the business. I went to the Dad and asked if he would re-due the appraisal and the Dad said it would take him a year to a year and a half to get to my appraisal. This was just another obstacle as the BIA only had three people on the list they would allow me to select to get the appraisal done but they were not available at the time or would have taken years. I eventually just started using the land. They sent a cease and desist that said I was illegally because I did not have an approved business lease. This cease and desist had an appeal process so I appealed the letter to the IBIA. The appeal process took around 3 years. The outcome was that the BIA was forced to do the appraisal. They only did the appraisal so they could determine the value of the land. They charged me for the time I used the land and the value of the land which was to be divided amongst the fractionated owners of the land. In the end, the small amount of money that was collected from

me was paid to the BIA, divided amongst the fractionated land owners, which I received 80% of the money collected because I own 80 percent of the land. This made no sense and I found this to be another way to stop me from using my land to benefit tribal people. The BIA is well known in Indian Country as a stagnant agency with many incompetent employees. They hold an office and use discretionary decision making authority to make decisions that are corrupt, they play favoritism, and make friends with certain tribes who receive financial gains for the friendship. They are a well-known agency with corrupt decision making ability.

Participant number 0-003 stated he did not believe there were any legal time frames an agency has to comply with. He said, “our tribe would like to see time frames set and adhered to by the federal agency (BIA). Currently, the federal agency takes too long to review projects like our burn plans. When the burn plans are not approved, it sets implementation back anywhere from weeks to months which has a fiscal impact on the short and long term for the Hoopa Tribe.”

Participant number 0-004 stated the impacts of untimely processes can lead to project delays, or even failure to implement projects that are time-sensitive (e.g. a burn that must be completed under specific weather conditions, or a salvage timber sale or logging activities which hurts the tribe economically and traditionally). “I’m not aware of any set legal timeframes for an agency to review our projects although I believe they sometimes have general targets for review timeframes. The time it takes the agency to review projects impacts project outcomes if seasonality is a factor. Untimely processes can lead to delays and even failure.

When the participants were asked what tribal sovereignty meant and the what the benefits are to them the following quotes were provided:

“The benefits to Native American Tribe’s are the freedom to control the tribes future, to operate your own government without fear of interruption from outside agencies. We should be able to self govern without interference of outside agencies telling us how to live our lives as Native People. We are simply trying to survive in the modern world with the small land base we were left with and we cant even regulated that without government interference.”

“I know there is a federal definition to tribal sovereignty. For me personally, I believe tribal sovereignty is a tribe’s ability to be autonomous from any other government and be able to take care of ourselves. We strive to take care of ourselves. Unless we are both economically and governmentally sovereign, we will never truly be sovereign. If we can not decide for ourselves how to implement land management practices with the idea that sovereignty is the ability to manage and take care of yourself, it doesn’t really exist. We are not able to make our own decisions. We are not truly sovereign, we can not manage the lands that we own, we can not implement traditional land management the way we want to because there is always a regulatory process that we have to go through. As long as there is a third party regulatory process, we will never be a true sovereign tribe.”

“There are huge benefits to being sovereign, the concept that we are moving towards true sovereignty is the direction we are driving to. We do use tribal sovereignty as a legal definition to push many boundaries for what we are able to implement. We use it as the shield and sword thought process as the shield helps protect us as we go through process and it helps cut through red tape when we can. I think cultural fire is a great example that we use our tribal sovereignty status to push the envelope and to get fire on the ground regardless what the state or the federal government says. Even though we do go through the required process, there is still a gray area were we have to assert our tribal sovereignty to get things done. It is extremely important for the Yurok tribe, and I think all tribes.”

“In a legal sense tribal sovereignty means that Tribes have a right and the authority to govern themselves, meaning create their own laws, policies, government systems, and so forth. In practice I think it’s also important for the U.S. government recognize and respect the distinct differences between each Tribe and for Tribes to be able to strengthen our individual identities through our governing practices.”

Figures 9-14 depict traditional land management via controlled burning by the Hoopa Valley Tribe in 2002.



Figure 9: Untreated Hazel Stand in Hazel Camp, 2002. Photograph By the Author.



Figure 10: Traditional Bear Grass Burn With A Heavy Fuel Load Due To Lack Of Treatment Or Previous Fire On The Ground, 2002. This Created A Higher Risk Of The Fire Getting Away. Photograph By The Author.



Figure 11: Certified Fire Fighter, Fuels Specialist, Burn Boss, Hupa Tribal Member, Kevin Lane. Tribal Members Must Meet Specified Qualifications To Conduct Cultural Burns On Trust Land. Photograph By The Author.



Figure 12: Traditional Bear Grass Burn, 2002. Photograph by the Author.



Figure 13: Traditional Hazel Burn with Basket Weavers, 2022. Photograph by the Author.



Figure 14: Hazel Burn with Outcome: Clean from Brush, 2002. Photograph by the Author.

Pevar 2002, describes in his book about the complex reasons why native people continue to live on reservations (trust land).

While most groups migrated to this country in order to assimilate into it, Indian tribes have resisted assimilation and fought for autonomy and independence. The overarching problem that reservation Indians face today is the confusing pattern of federal laws that regulate so many of their activities. No other ethnic or cultural group is so heavily regulated.

Chapter 6: Tribal Trust Land and Federal Governance

This thesis studies the impacts that the United States Federal Government regulations and cultural resource compliance laws have on Native American tribes and the way they manage their tribal trust lands. There are six ways tribes have obtained interests in land: federal statute, executive action, treaty, purchase, action of a foreign nation, and aboriginal possession. Treaties were once negotiated between the United States and tribal leaders or governments. Since 1871, Congress has regulated Indian affairs through legislation. “The greatest disadvantage to having land held in trust status is that the tribe lacks full control over it. Everything a tribe may want to do with trust property-sell, lease, mortgage, or develop it-requires federal approvals, a constant source of aggravation to many tribes” (Pevar 2002: 98).

The following charts were formulated based on the questionnaire that was used to conduct this research.

The following table demonstrates the participant knowledge of what trust land is and how the land is managed under Title 25 of the Code of Federal Regulations. The tribes are all required to manage projects under the National Environmental Policy Act. Participants also recognized the trust land is held by the federal government for the use of the tribe. Although the tribes are sovereign nations, they must still comply with cultural resource management laws and all other laws that fall under Title 25 of the Code of Federal Regulations.

“These are tribal lands that are held in trust by the federal government for the use of the Tribe, meaning the government technically “owns” the legal title of the lands but the Tribe holds the beneficial interest. Part of the trust responsibility on the US government includes a

fiduciary obligation to support tribal governments and protect tribal trust lands and resources.”

Table 1: Responses Indicating Participant Knowledge Of What Trust Land Is And How The Land Is Managed.

Participant Number	Participant expressed knowledge and understanding of what Trust Land is.	Participant expressed an understanding of Trust Land shall be protected by the United States Government for the benefit of the tribe.	Participant implements projects that are regulated under Title 25, Code of Federal Regulations .	Participant implements projects that were compliant under the National Environmental Policy Act.
1	X	X	X	X
2	X	X	X	X
3	X	X	X	X
4	X	X	X	X
5	X	X		

“I am an Native American who descends from the Karuk and am enrolled in the Alturas Indian Rancheria, a federally recognized Indian tribe. I have served as the Vice-Chairman of the Alturas Tribe for the last 18+ years. Our tribal land is all held in trust by the federal government. We are regulated under 25 CFR and adhere to all of the laws under this title.”

“As far as tribal trust land goes, the Yurok Tribe was separated from the Hoopa Valley Reservation in 1993. The reservation is one mile on either side of the river for 40 miles. We were transferred right around 4,820 acres of tribal trust land. There is 80 square miles of reservation so we were only transferred a tiny portion, maybe 10 percent of our reservation was transferred as trust land. I am familiar with trust land. We don’t have all of our Aboriginal land.”

“These are tribal lands that are held in trust by the federal government for the use of the Tribe, meaning the government technically “owns” the legal title of the lands but the Tribe holds the beneficial interest. Part of the trust responsibility on the US government includes a fiduciary obligation to support tribal governments and protect tribal trust lands and resources.”

“Most of our regulatory/compliance laws all tie back into 25 CFR 163, and the Planning Department at Forestry mostly deals with satisfying any NEPA requirements for environmental compliance under the CFR (e.g. proposing projects eligible for Categorical Exclusion or preparing Environmental Assessments for approval by the BIA). We also ensure all projects are in accordance with our Tribal Forest Management Plan.”

The following table demonstrates all tribes have a wealth of experience working on cultural resource management or economic development projects on trust land. Participants have a combined total of 80 plus years working with the government on regulatory compliance processes and/or cultural resource management and economic development.

Table 2: Responses Indicating Experience Working On Cultural Resource Management Or Economic Development Projects On Trust Land.

Participant Number	Participant works with the Bureau of Indian Affairs (BIA) to implement projects on Trust Land.	Participant has experience working with county, state, and federal agencies to implement Trust Land management and/or development projects.	Participant expressed knowledge of traditional land management practices.	Participant expressed concern over compliance laws they are obligated to follow.	Participant expressed concern regarding the extended period of time it takes to complete project(s).
1	X	X	X	X	x
2	X	X	X	X	X
3	X	X	X	X	X
4	X	X	X	X	X
5		X	X	X	X

“We manage projects within the trust land and I understand how the Bureau of Indian Affairs works. The entire reservation is under the auspicious or jurisdiction of the BIA. Even though we have a lot of fee land within the tribe, even the fee land, fee simple land is under the

jurisdiction of the BIA so it makes it complicated for the tribe to do projects. We do have several land management projects we are doing, we work with our cultural fire management to do cultural burns, we work with the forestry department to do timber harvest plans, as well as prairie restoration plans, we are currently under a forest management plan right now that the BIA runs but we are drafting our culture re-adaptive land management plan and that will take place of our forest management plan. We implement three major kinds of land management practices, culture, fire, prairie, and timber harvest. We do watershed management, road restoration work, and this is a large part of what we do on fee land and tribal trust land.”

The following table demonstrates all of the tribes in this study feel economic hardship, lack of ability to self govern, manage cultural resources and economic development projects, and expressed frustration with the time it take to complete the regulatory process.

Table 3: Expressions Of Economic Hardship, And/Or Lack Of Ability To Self Govern.

Participant Number	Participant expressed their tribe felt economic hardship due to the time constraints and/or bureaucracy of implementing project(s)	Participant expressed Federal Government agencies did not have clear timelines or guiding factors to when their project(s) would be approved.	Participant expressed concern over a lack of ability to self govern and manage their Trust Land in the best interest of the Tribe.	Participant expressed concern over their ability to practice their traditional way of life due to federal government laws that regulate their land management activities.	Participant expressed a loss in revenue or jobs due to federal agencies lack of ability to complete the regulatory compliance process in a timely manner.
1	X	X	X	X	X
2	X	X	X	X	X
3	X	X	X	X	X
4	X	X	X	X	X
5	X		X	X	

“As far as I’m aware I don’t think there are any set legal timeframes for an agency to review our projects although I believe they sometimes

have general targets for review timeframes, I'm not totally sure on this matter though. Timeframes for review can impact our implementation timelines, which can sometimes impact project outcomes depending on the nature of the project if seasonality is a factor."

"Yes, untimely processes of review/approval can lead to project delays, or even failure to implement projects that are time-sensitive (e.g. a burn that must be completed under specific weather conditions, or a salvage timber sale or other logging activities)."

"Our traditional knowledge tells us when we are supposed to burn. The BIA, States, and Federal government all tell us when we can burn and it does not work out with our traditional knowledge. When we wait for the state process to find that window of opportunity to complete a burn, it doesn't mesh with the environmental window of opportunity. Every year we have to wait for what feels like this perfect needle to get threaded to put fire on the ground for land management purposes. Part of our reservation is in the coastal zone and there are many endangered species we have to consider. We understand the importance of the endangered species but the compliance process hinders our process to manage through traditional and ecological knowledge. This adds more restricting layers to complete what we are trying to accomplish. We understand the need for protections of endangered species. The problem is how we go about addressing the problem. The single species management plan should look at the entire ecosystem to benefit the single species instead of looking at single species management. We only look at that species and sometimes that doesn't line up with the overall forest health of forest health and ecology. The timelines for EA's, EIR's, ES's, and others are not in any of our control. It all has crazy timelines to complete all of it. There are huge negative impacts to the tribe."

"The impacts are loss of economic development opportunities, a loss of money spent on attorneys, loss of time, loss of educational and housing opportunities for tribal members due to spending funds on attorney fees, and uncertainty of the future of tribal members and descendants."

The United States Congress created federal agencies to manage resources within the United States. These agencies enforce the laws that were adopted by Congress. Staff carry out the duties assigned to them by working with land owners to make sure they are complying with the law. For example, the Department of the Interior oversees the Bureau of Indian Affairs (BIA). The BIA is charged with the assignment

of tribal oversight. They work directly with each tribe and negotiate Annual Funding Agreements or 638 Contracts with the tribes. The funding is different for each tribe and is based on many determining factors such as the amount of land they have to manage, the amount of people enrolled in their tribe, and many other reasons.

Many of the laws that pertain to managing Tribal Trust Land has created a time consuming process to implementing forest management projects or development on Native American Tribal Trust Lands. Many of these laws were created to protect resources but have actually created obstacles for Native American Tribes. According to the Environmental Protection Agencies (EPA) Webpage, Section 102 in Title I of the National Environmental Policy Act requires federal agencies to incorporate environmental considerations in their planning and decision making through a systematic interdisciplinary approach. This systematic approach leaves room for drawn out, time consuming regulatory process' to take place.

In addition, Title II of NEPA established the President's Council on Environmental Quality (CEQ) to oversee NEPA implementation. CEQ issued their own regulations (40 CFR Parts 1500-1508) and made them binding on all federal agencies. To make policy even more burdensome, as was stated by several of the participants who interviewed, "Many federal agencies have developed their own NEPA procedures that supplement CEQ and NEPA regulations" (epa.gov/nepa/what-national-environmental-policy-act#). Many tribes are trying to manage their land by using ancient traditional knowledge; knowledge they feel historically left the land, water, and animal life flourishing (mkwc.org). Several participants have expressed their

frustration with the negative impacts the regulatory process has on the staff and the native people.

Chapter 7: The Impacts Federal Regulations have on Native American Trust Land

The results conclude that all five participants interviewed for this research are Native American and enrolled tribal members of one of the three tribes interviewed (Hoopa, Yurok, Alturas). One participant did not state the tribe she is enrolled but did state she is Native American.

The questionnaire concludes that the participants in the interview all have a clear understanding of trust land, how it is acquired and held by the Federal Government for the use of the tribe. The participants all expressed their inability to use the land like they would like to. There is a strong understanding that the federal government has a fiduciary obligation to support tribal governments and protect tribal trust land and resources that are important to the tribes.

All but one participant was able to identify the federal government as the regulatory agent that enforces Title 25, Code of Federal Regulations (CFR). Participants identified the Bureau of Indian Affairs as their trustee who they have to work with and comply with regulations adopted under Title 25 CFR. The participants have a clear understanding that the BIA has jurisdiction over their tribal lands and cultural resource compliance laws and federal regulations must be adhered to in order to conduct projects. The participants shared knowledge regarding traditional and development projects being delayed, incomplete, and or unfinished due to the regulatory compliance timeframe by the BIA and other federal agencies. Viewing traditional land management practice as intangible heritage, the questionnaires provide a basis for concluding that federal land use regulations adversely impact the

maintenance of these traditions and practices. The questionnaires provide insight as to the cultural, historical, and institutional dynamics of the identified impacts.

The participant interviews conclude that traditional and/or cultural land management projects are hampered by compliance law approvals or lack of consistent project approval deadlines. Each participant expressed a flaw in the federal government system when it comes to approving projects. There are not hard deadlines to approving projects by the BIA and therefore, it can create grant funds to be returned, projects not being completed in a timely manner, or a return of grant funds due to grant compliance and timing issues. This research can conclude there are financial losses that are caused to tribes or tribal membership when development projects are stalled by federal agencies like the BIA. There is concern from the participants that there is so much red tape, when it comes to land development and traditional management, that tribal people are suffering culturally and economically from the consequences.

Three major conclusions we can take away from this research is federally funded agencies do not always have clear timelines or guiding factors that establish when and how a project will be approved; Native American Tribal People lack the ability to practice their traditional way of life due to federal government laws that regulate their land management activities; and lastly tribal membership are losing revenue, have less jobs, and less cultural activities due to federal agency oversight that hinders production on Trust Land.

“To meet the BIA’s mission of maintaining government-to-government relationships with Indian tribes, within the spirit of Self-Determination,” (bia.gov), the process to collectively come together with tribes to evaluate the barriers that are stalling

projects from being completed in a timely manner should be evaluated to determine how the agency can better meet the needs of the tribes.

APPENDICES

I. IRB APPROVED QUESTIONNAIRE

II. QUESTIONNAIRES

i. 0-0001

ii. 0-0002

iii. 0-0003

iv. 0-0004

v. 0-0005

APPENDIX I – IRB APPROVED QUESTIONNAIRE

Native American Forest Management/Trust Land Development Project Interview Questions

Date:

Time:

Place:

Name:

Field Code Number:

Tribal Affiliation:

**Name will be associated with the field code number. The name will not be included in the thesis, only the field code.

General Information:

1. What is your occupation?
2. How long have you worked in this position?
3. What are your job responsibilities?
4. Do you work in a specific department or with several other departments?

Tribal Trust Land Management/Development

1. What do you know about Tribal Trust Lands?
2. Do you manage projects on Tribal Trust Land?
3. What Type of Project(s) do you manage or participate in? Are you familiar with implementing forest management or Native American land management/land development projects on Tribal Trust Lands?
4. What regulatory/compliance laws are you implementing projects under?
5. How do these regulatory/compliance laws influence your project(s) outcome?
6. What is the timeframe to complete the regulatory/compliance law process?

7. What is the legal timeframe an agency has to review your project and how does this impact the outcome of your project(s)?
8. Are there impacts to untimely processes?

Tribal Trust Background

1. What does Tribal Sovereignty mean?
2. What are the benefits of Tribal Sovereignty to Native American Tribes?
3. Are there negative impacts to Tribal Sovereignty?
4. What type of funding do you receive to implement your projects(s)/land development?
5. Are there sufficient resources available to fund your land management project(s) or do you fund them yourself?
 - If so, how do you fund them?
Money made through economic development.
6. Are there additional expenses associated to managing Tribal Trust Land?

Impacts, outcome, and benefits

1. What is the current status of your project(s)/ land development?
2. What influenced the outcome of your project?
3. Was this outcome positive or negative to the tribe? If so, in what manner and what are the impacts to the tribe?
4. Are you working with specific agencies to influence a particular outcome?

- If so, what is their response and how does it impact tribe?
5. Who benefits from the project(s)/land development?
 6. How are they impacted when a project or land development is not implemented due to the inability to work out regulatory/compliance laws?

Collaboration

1. Do you work with any agencies to discuss the pros and cons of regulatory/compliance laws that impact your projects?
 - If so, are there proposed changes that are being made by you or the agency as to how to implement project(s)/land development in the best interest of all parties?

APPENDIX II(i) – Questionnaire 0-001

Native American Forest Management Project Interview Questions

Date: April 5, 2022
Time: 12 PM
Place: Yreka, California
Name:
Field Code Number: 0-001
Tribal Affiliation: Alturas Indian Rancheria

**Name will be associated with the field code number. The name will not be included in the thesis, only the field code.

General Information:

5. What is your occupation?
6. How long have you worked in this position?
18 years
7. What are your job responsibilities?
Tribal Government Affairs/Building and Development
8. Do you work in a specific department or with several other departments?
Several Departments

Tribal Trust Land Management/Development

9. What do you know about Tribal Trust Lands?

I am a Native American who descends from the Karuk and am enrolled in the Alturas Indian Rancheria, a federally recognized Indian tribe. I have served as the Vice-Chairman of the Alturas Tribe for the last 18+ years. Our tribal land is all held in trust by the federal government. We are regulated under 25 CFR and adhere to all of the laws under this title.

10. Do you manage projects on Tribal Trust Land?

Yes

11. What Type of Project(s) do you manage or participate in? Are you familiar with implementing forest management or Native American land management/land development projects on Tribal Trust Lands?

Yes, I am very involved in projects but the Bureau of Indian Affairs interpretation is very different than mine. Say, I want a business lease in order to use a fraction of my land that I have a percentage in it requires me to get approval from all other members in order to use the land and the only way to use the land is to partition. I paid for a patrician and the BIA did not approve it because there were unsettled probates. The BIA was the one who did not complete the probates so they wont approve any us of the land because they wont do their job. They said their hands are tied. They use discretion all the time in other land situations but in my situation they tried to stop me from using the land so I no longer ask for permission but rather have an attitude to ask for forgiveness. I received a cease and desist and for me to not use the trust land in my name after starting a business. I had a lease appli9cation pending for fifteen plus years and I have the documents to prove it. They would never approve a lease because of some reason, one reason after the next, an evolving list of ways to stop a lease form happening.

I agreed that I was trespassing. I am 80% owner of around 120 acres of trust property. They (BIA) were supposed to value what the truss pass was, what the damage was. They did an appraisal on the land, conducted a site visit, and saw how much of the land I was using and decided what the penalty would be for using the land before probate. I finally had an BIA approved appraisal on the land. The value of the use of the land was so small that it didn't have a drastic impact on me because I am the majority owner of the land and I keep 80% of the lease appraisal value.

The BIA tried requesting that I provide a list of all possible business' that I may develop on the trust land. Nowhere in any of the BIA's policies does it say the BIA has permission to determine what type of business I may operate on the land.

I was forced to go through the IBIA process. We reached an agreement to pay back rent an the BIA would approve the pending lease that I had with them. When it came down to the final wording in the original lease application that I had filed and this was unacceptable to me. , the BIA tried to incorporate new language that would make me define the use of the land. I was not able to define the use for the land and was not willing to limit myself as to what I could use the land for.

The settlement that was presented to me was not acceptable because they are requiring me to provide a list of business' and this was not a part of the original business lease application on a public domain allotment.

At this time there is no approve lease because I am not willing to sign an agreement that limits use of my trust land.

There is currently no lease, I am not paying rent and I am using the land how I want to out of defiance because the BIA is being unreasonable.

After 20 years of having problems with the BIA, I have determined that it will be best to donate the land to a tribe. Of the total Indian land left on the allotment, I own 90% and I would guess that only 30% of the people who have interest of the other 10% remaining ownership are left. This is a habitual partition nightmare the BIA has created for tribes and Native Americans who hold Trust land that is fractionated.

I have spent hundreds of thousands in attorney fees to be able to use my land and legally still do not have appropriate signatures to use the land legally.

12.

Casino construction, recycling, gas station, manufacturing, distributing, retail, and government.

13. What regulatory/compliance laws are you implementing projects under?

Federal EPA laws

Environmental Protection Agency, Bureau of Indian Affairs (25 CFR), National Indian Gaming Commission, California Gambling Control Commission (CGCC), Alcohol and Tobacco Fire Arms (ATF), Tobacco Trade Bureau, Alcohol Beverage Control (ABC).

I am only required to adhere to federal laws because I belong to a tribe and am developing on trust land. I built a gas station and complied with all federal laws that are required of me or anyone else that is developing. I can use the land for anything that is legal under federal law.

Land use permits are issued under the BIA because they are a federal agency who has authority over trust lands. They are the ones who are throwing up hurdles and d...

14. How do these regulatory/compliance laws influence your project(s) outcome?

For several decades the BIA tried to stop me from developing on my trust land. They used every reason they could come up with to stop me. They even used archaeology rules against us. They saw a circle on the property from an areal view and tried to say it was an old pit and stop me from building. It wasn't an old pit I had diverted water from a spring and made a pond that was round. They came on my property and tried to stop development again by accusing me of tearing down an old historical cabin that belonged to an old Indian man and once they found out I moved the cabin to a safer place on the property they ran out of things to harass us over.

The BIA is supposed to be our trustee and help Native American People overcome political bureaucracy but instead they are constantly using personal judgements to decide whether or not a project will get approved. In the end, the regulations they used against me have not completely stopped me from developing.

Our tribe works to build business' so we do not have to depend on the BIA for money and can get to a point of self sufficiency. In order to do this we have to get away from the constant regulatory process whenever we try to do anything with our land. Every time you use BIA money or federal dollars you have to comply with their laws to get anything done on our land. We should be able to develop our land as we see fit in order to better our lives. When the BIA gives us money or we apply for EPA money to help us with land management projects, then we have to listen to what the government tells us and do what they say. We are choosing to get away from the government controlling us. We want to make our own money and enforce our own historical laws on ourselves. Isn't this what the government should want for us? The BIA has tried to use public domain allotment laws to impact my project because but I wasn't violating them. People made complaints that I was developing illegally. The BIA came to my land and tried to stop development but in the end discovered I did not break any laws. For many years they harassed me because of businesses our tribe is building and we are tired of being shut down instead of encouraged to become self sufficient.

“Kevin Bearquiver, who was the acting Superintendent of the BIA and told me, “you will never get a lease approved. I am going to shut you down.”

The BIA was putting up road blocks from the beginning they said the land was too fractionated and had to be probated. I started buying land owners out. I paid them and had them transfer the land through the BIA process. The BIA got upset at me and said I was forcing them to sign paperwork against their will. I started bringing people to the BIA office and had people sign over their gift deeds in front of Carmen Fassio who was a BIA staffer and was helping the agency create obstacles for me to use my family trust land. I addressed the fractionation problem by purchasing through gift deeds of co owner, consolidated the land the best I knew how and I felt the BIA took it personal and got upset with me. I was paying my family members two to three times the value of the land so I could obtain enough land to develop it.

15. What is the timeframe to complete the regulatory/compliance law process?

Over 20 years and the business lease application is still unsettled.

16. What is the legal timeframe an agency has to review your project and how does this impact the outcome of your project(s)?

There are timelines established under Title 25 CFR but the BIA gets away with responding before the timeline runs out but does not provide approval, just another obstacle to try to get over. They have excuses why things can not get be done in the manner requested. The process to get things done is always drawn out for years and finally people give up. I could have given up several times but I kept paying my attorney to fight for my rights to use the land. I am now using the land without an approved business license. I opened a gas station on my trust property and am waiting the day for the BIA to issue a cease and desist.

17. Are there impacts to untimely processes?

The impacts are loss of economic development opportunities, a loss of money spent on attorneys, loss of time, loss of educational and housing opportunities for tribal members due to spending funds on attorney fees, and uncertainty of the future of tribal members and descendants.

There have been three generations of unsettled problems with this land. Three generations have not been able to develop this land. If I did not personally have my own business and money to pay for attorneys to fight the BIA, this probate issue and inability to use the land would probably never be resolved. I am currently forcing the issue with the BIA so I can use the land to help Native American People.

If you inherit Indian land that is fractionated, you should be able to use it. The BIA should partition the land. The BIA will not partition if there is a probate. I asked for a lease and they said no you have to determine the value of the land first. The BIA said they had no money to determine the value. I then paid for the appraisal and then the BIA would not accept that appraisal. They gave me three people to chose from. I selected one. The owner of that company had a Son, the son did the appraisal as a partner of the business and the BIA would not accept it because they said I should have had the Dad conduct the appraisal because his name is on the business. I went to the Dad and asked if he would re-due the appraisal and the Dad said it would take him a year to a year and a half to get to my appraisal. This was just another obstacle as the BIA only had three people on the list they would allow me to select to get the appraisal done but they were not available at the time or would have taken years. I eventually just started using the land. They sent a cease and desist that said I was illegally because I did not have an approved business lease. This cease and desist had an appeal process so I appealed the letter to the IBIA. The appeal process took around 3 years. The outcome was that the BIA was forced to do the appraisal. They only did the appraisal so they could determine the value of the land. They charged me for the time I used the land and the value of the land which was to be divided amongst the fractionated owners of the land. In the end, the small amount of money that was collected from me was paid to the BIA, divided amongst the fractionated land owners, which I received 80% of the money collected because I own 80 percent of the land. This made no sense and I found

this to be another way to stop me from using my land to benefit tribal people. The BIA is well known in Indian Country as a stagnant agency with many incompetent employees. They hold an office and use discretionary decision making authority to make decisions that are corrupt, they play favoritism, and make friends with certain tribes who receive financial gains for the friendship. They are a well-known agency with corrupt decision making ability.

Tribal Trust Background

7. What does Tribal Sovereignty mean?

Tribal Sovereignty should protect me from interferences and political bureaucracy. We should be our own government which gives you rights that protect you from lawsuits, litigation in most cases pertaining to state or private agencies, and that we can determine our own laws under our constitution regarding resource management, housing, business, etc. It doesn't always work like this, especially in our situation. We are only sovereign nations if we can economically make our own money to regulate as we wish. We don't want to be considered recipients of the government like a welfare system but they try to hold us back from development and keep us under their control.

8. What are the benefits of Tribal Sovereignty to Native American Tribes?

The benefits to Native American Tribe's are the freedom to control the tribes future, to operate your own government without fear of interruption from outside agencies. We should be able to self govern without interference of outside agencies telling us how to live our lives as Native People. We are simply trying to survive in the modern world with the small land base we were left with and we cant even regulated that without government interference.

9. Are there negative impacts to Tribal Sovereignty?

I don't know why there would be negative impacts. We can waive our sovereignty in circumstances that we need to.

10. What type of funding do you receive to implement your projects(s)/land development?

The only funding we get is 638 compact funds but that is not used for project development. Those funds are only enough to cover government functions. This is why we need to develop our land so we can make money to subsidize programs, feed ourselves, survive, and build housing. We are probably one of the lowest funded tribes in the nation.

11. Are there sufficient resources available to fund your land management project(s) or do you fund them yourself?

Our projects are self funded.

- If so, how do you fund them?
Money made through economic development.

12. Are there additional expenses associated to managing Tribal Trust Land?

It depends on how much land you have, the landscape, what type of development or improvements you need to do to the land, if there is water, sewer or other resources, electrical development, road access and maintenance and basic infrastructure. Any time you apply for federal grants or receive BIA money you have to manage the way the federal government tells you to and follow their regulations. Tribes don't usually have the money to manage the land without assistance so they just keep doing things the way the feds want it to be done. This isn't the way tribes would traditionally manage or develop.

Impacts, outcome, and benefits

7. What is the current status of your project(s)/ land development?

I am still operating illegally under the BIA's opinion. I do not have approval of the business lease and it continues to be an ongoing problem with no end in sight. I could be subject to another cease and desist and I am put in a position to be free from personal judgement from the BIA. I am not provided the opportunity to assert my rights over the Indian trust land that I inherited and should have ability to manage it to the benefit of the native people who descend from it. My hands are tied but if I wait for the BIA to make a decision, I will not be alive to see the day my tribe will prevail.

8. What influenced the outcome of your project?

I
I am
and
I got tired of waiting for the BIA to make do what they are supposed to be doing. I decided to add new construction on the land to economically benefit my tribe. I am currently creating revenue but it is only a matter of time before I receive a cease and desist and will have to file another appeal to force the BIA to do their job.

9. Was this outcome positive or negative to the tribe? If so, in what manner and what are the impacts to the tribe?

The impact is positive because of financial gains but there is litigation threats hanging over my head. It cost us a lot of money to get to where we are and it will take us years to pay back the money I spent on attorney fees to defend our tribe and use this land.

10. Are you working with specific agencies to influence a particular outcome?

Yes, the Bureau of Indian Affairs.

- If so, what is their response and how does it impact tribe?

The current status is that we are at a standoff. They wait to see what I do and we wait to see what they do. They still believe I am trespassing because I do not have an approved lease. I feel like I am in a constant state of playing chess with them over this issue. I will continue to use the land as I see fit until the BIA can be reasonable and work through the process of issuing my business application.

11. Who benefits from the project(s)/land development?

Tribal Members and their family.

12. How are they impacted when a project or land development is not implemented due to the inability to work out regulatory/compliance laws?

Collaboration

2. Do you work with any agencies to discuss the pros and cons of regulatory/compliance laws that impact your projects?

Yes

- If so, are there proposed changes that are being made by you or the agency as to how to implement project(s)/land development in the best interest of all parties?

Our attorney works with the Bureau of Indian Affairs to address our concerns. This is a great expense to me and the tribe. This is money that could be spent on better things such as housing and resources.

APPENDIX II(ii) – Questionnaire 0-002

Native American Forest Management/Trust Land Development Project Interview Questions

Date: 04-21-2022
Time: 8 PM
Place: Phone Interview
Name:
Field Code Number: 0-002
Tribal Affiliation: Yurok

**Name will be associated with the field code number. The name will not be included in the thesis, only the field code.

General Information:

9. What is your occupation?

How long have you worked in this position?

10. What are your job responsibilities?

Filling in for the Chairman when he is gone. As the Chairman, he is the CEO of the tribe. The Chairman does day to day operations and works with the Tribal Council, Executive Staff, Membership, Legal Department, overseeing all of our corporations. I am the president of our Yurok Tribe Construction Corporation and our Perguish 8A corporation as well.

Do you work in a specific department or with several other departments?

We have 29 departments, 5 corporations, around 15 to 20 companies under our corporations (fisheries, courts, housing, economic development, and more). We oversee around 40 plus departments.

Tribal Trust Land Management/Development

18. What do you know about Tribal Trust Lands?

As far as tribal trust land goes, the Yurok Tribe was separated from the Hoopa Valley Reservation in 1993. The reservation is one mile on either side of the river for 40 miles. We were transferred right around 4,820 acres of tribal trust land. There is 80 square miles of reservation so we were only transferred a tiny

portion, maybe 10 percent of our reservation was transferred as trust land. I am familiar with trust land. We don't have all of our Aboriginal land

19. Do you manage projects on Tribal Trust Land?

.Yes

20. What Type of Project(s) do you manage or participate in? Are you familiar with implementing forest management or Native American land management/land development projects on Tribal Trust Lands?

We manage projects within the trust land and I understand how the Bureau of Indian Affairs works. The entire reservation is under the auspicious or jurisdiction of the BIA. Even though we have a lot of fee land within the tribe, even the fee land, fee simple land is under the jurisdiction of the BIA so it makes it complicated for the tribe to do projects. We do have several land management projects we are doing, we work with our cultural fire management to do cultural burns, we work with the forestry department to do timber harvest plans, as well as prairie restoration plans, we are currently under a forest management plan right now that the BIA runs but we are drafting our culture re-adaptive land management plan and that will take place of our forest management plan. We implement three major kinds of land management practices, culture, fire, prairie, and timber harvest. We do watershed management, road restoration work, and this is a large part of what we do on fee land and tribal trust land.

21. What regulatory/compliance laws are you implementing projects under?

Due to the way the reservation is and how our land holdings are we fall under the BIA's land management jurisdiction. We also fall under the state of California for our fee lands that we own off reservation. Within our reservation territory we also work with the United States Forest Service, federal regulations for those land management services. We also have land management agreements with the National Parks so we operate under the National Park .and state park system as well. I don't think there isn't a regulatory body that we do not work under. We work under federal EPA and state national resources departments as well. Most of our projects fall within these regulatory categories. We either go through the BIA or California regulatory process.

22. How do these regulatory/compliance laws influence your project(s) outcome?

The regulatory compliance laws have a huge influence on how we develop our projects, as well as how we implement the projects. All of the BIA regulatory compliance issues combined with the state regulatory compliance issues really make the process challenging. These processes, at a foundational level, don't really understand traditional land management practices. The vast majority of the regulatory compliance issues on both the federal side and the state side are

geared towards commercial regulations and drive everything toward an area that doesn't fit our needs as a tribe. Also this process adds several layers to the planning process where Yurok, being a self determination tribe, we have our own regulatory system. We have our own foresters, biologists, our own compliance systems, planning process and as we start to develop our projects, we start with our core value of traditional land management. We go through our internal process for review and then we have conduct the work again with different agencies. When we go through the BIA process, we have to go through the process of proving compliance all over again. This is the same for the process we go through when we do state projects. Depending on the project there can be additional layers to meet regulatory compliance. We have to go through the project again to make sure it lines up with the next agencies regulatory process. We are stress to comply with project timelines and requirements that each of those agencies have. Each of the federal agencies all have their own separate departments as well and we have to work through each one of them so we are kind of at the mercy of the agency. For instance, the BIA in our region always seems to imply they are understaffed and underfunded and where we are at in the que for our projects, the tribe never knows. We have no say on how fast, or how quickly the project be processed. We don't ever know how fast a project will take to go through the review process.

The tribe is 96% grant funded. We are under the weights of implementing projects centered around what the funders want us to do and then we have to make that match the federal regulations and the BIA controls. We don't have a lot of discretionary funds to do what we want. Our compact dollars that we receive from the BIA are very limited, they barely cover our base needs. Our base role was originally at 2300 tribal members and we are currently at 6600 members. The compact funding we get from the BIA is limited and we have to divide it between our natural resources department, education, social services, police fire, council operations, as well as our administration staff. We are very underfunded. We have to hustle for additional funding through grant sources. The grants are oftentimes overlapped. We look at the watershed holistically and try to plan projects for the entire watershed because the makeup of our land forces us to comply with many different land regulators. We may have to comply with BIA, State, and Federal regulations just to implement one grant. We have dual processes that we have to go through often times at the same time which forces us to spend much of our time completing regulatory process'. Half of the time we are spending money for our staff to get through the regulatory BS approvals and getting to the end of the process with the BIA so we can start a project. State projects leave very short window of opportunity to complete our projects because of the time we spend completing the regulatory process. To actually get boots on the ground or fire on the ground, trees on the ground, takes way too long. There is also a huge lack in the process of traditional land management by these agencies. What we have to do work within the commercial guidelines and make them fit our traditional needs. The BIA is historically and currently underfunding us, we have old agreements, old land

management agreements that linger for decades. We are currently working on our cultural fire management plan and we're working under a fuels plan that the BIA has CAL Fire responding to the Yurok Reservation so we have to implement a fire management program that goes through CAL Fire regulatory operations process and then back to the BIA again for approval because the BIA has a contract with CAL Fire. Every year we are putting our tribe at risk when we do cultural burning because the BIA is not given all of that control over to our own fire department. So we are working in a really dark, gray area when we put fire on the ground. We are unsure who actually has responsibilities as far as insurance, red cards for the fire fighters to be on those cultural fires. It puts the entire tribe at risk and makes it difficult for Council to expand our traditional land management knowing that there is potential for the tribe to be adversely affected if one of the fires becomes large or out of control. Every single year this problem is something Council has to contemplate. We push the limits but there is no other way to get our cultural burns done because the BIA has not created a program that opens the door for programs like this.

23. What is the timeframe to complete the regulatory/compliance law process?

The timeframe the agencies have to review our projects impacts the work. Most of the timelines are staggard. None of them are hard and fast with no deadlines for completion and there is no real way that we can push or force the project evaluation process to be completed in a timely manner. There are always loopholes in the system that can start the process over again and it's the same with the state process as well. Since we have to comply with both of them, it puts a huge amount of stress on our implementation, our prairie restoration and our cultural fire are extremely time dependent because there is a certain time that we want to be burning.

24. What is the legal timeframe an agency has to review your project and how does this impact the outcome of your project(s)?

No agency has a hard, fast deadline to complete our land management applications.

25. Are there impacts to untimely processes?

Our traditional knowledge tells us when we are supposed to burn. The BIA, States, and Federal government all tell us when we can burn and it does not work out with our traditional knowledge. When we wait for the state process to find that window of opportunity to complete a burn, it doesn't mesh with the environmental window of opportunity. Every year we have to wait for what feels like this perfect needle to get threaded to put fire on the ground for land management purposes. Part of our reservation is in the coastal zone and there are many endangered species we have to consider. We understand the importance of the endangered species but the compliance process hinders our

process to manage through traditional and ecological knowledge. This adds more restricting layers to complete what we are trying to accomplish. We understand the need for protections of endangered species. The problem is how we go about addressing the problem. The single species management plan should look at the entire ecosystem to benefit the single species instead of looking at single species management. We only look at that species and sometimes that doesn't line up with the overall forest health of forest health and ecology. The timelines for EA's, EIR's, ES's, and others are not in any of our control. It all has crazy timelines to complete all of it. There are huge negative impacts to the tribe.

Tribal Trust Background

13. What does Tribal Sovereignty mean?

I know there is a federal definition to tribal sovereignty. For me personally, I believe tribal sovereignty is a tribe's ability to be autonomous from any other government and be able to take care of ourselves. We strive to take care of ourselves. Unless we are both economically and governmentally sovereign, we will never truly be sovereign. If we can not decide for ourselves how to implement land management practices with the idea that sovereignty is the ability to manage and take care of yourself, it doesn't really exist. We are not able to make our own decisions. We are not truly sovereign, we can not manage the lands that we own, we can not implement traditional land management the way we want to because there is always a regulatory process that we have to go through. As long as there is a third party regulatory process, we will never be a true sovereign tribe.

14. What are the benefits of Tribal Sovereignty to Native American Tribes?

There are huge benefits to being sovereign, the concept that we are moving towards true sovereignty is the direction we are driving to. We do use tribal sovereignty as a legal definition to push many boundaries for what we are able to implement. We use it as the shield and sword thought process as the shield helps protect us as we go through process and it helps cut through red tape when we can. I think cultural fire is a great example that we use our tribal sovereignty status to push the envelope and to get fire on the ground regardless what the state or the federal government says. Even though we do go through the required process, there is still a gray area where we have to assert our tribal sovereignty to get things done. It is extremely important for the Yurok tribe, and I think all tribes.

15. Are there negative impacts to Tribal Sovereignty?

I don't see negative impacts to tribal sovereignty. We have the ability to waive our sovereignty and we do this on a regular basis to enter into contracts that it makes sense to do so. As a tribe, you have the ability to give up your sovereignty for individual contracts or projects.

16. What type of funding do you receive to implement your projects(s)/land development?

We use federal, state and grant funding. We have a history of an organization to develop a use plan so we can take revenue from our economic development to get us to a place where we can put money back into land management. It's the first time we have been able to do this. Our revenue we are getting from our timber harvest is all going back into land management. We have now added one other layer that we have never had before to our funding sources. It's a small portion. We have also used carbon credits and sixty to eighty percent of our revenue from carbon credit goes back into land management expenses. We now generate money from timber harvests that also assist in land management expenses but the majority comes from grants and partnerships.

17. Are there sufficient resources available to fund your land management project(s) or do you fund them yourself?

No. The funds we receive from the BIA is a fraction of what we need.

- If so, how do you fund them?

Under the tribal trust and fee simple we manage about one hundred and fifteen thousand acres. We probably generate enough revenue to treat less than four hundred acres a year. It's a tiny fraction of what we actually need to manage the land in a manner that meets the requirements of the BIA, state and federal departments. For our ancestral territory, the DAWS Act and Allotment Act affected the tribe and we have one hundred and fifty years of terrible forestry management that has been done to our ancestral territory. The amount of work is generational, we view it as generational work to undue. The vast majority of our reservation looks like a tree plantation. We know from our traditional ecological knowledge and our elders that our forest doesn't resemble anything like it use to, it doesn't function in any way that it use to so there is a huge need for funding.

18. Are there additional expenses associated to managing Tribal Trust Land?

We have a planning and community development department, each of our natural resource departments have their own grant writers. We are forced to go after grants to help manage our forests but then we are forced to manage how the states and federal government tell us to manage instead of managing through traditional and ecological management. We spend a good portion of our BIA

compact dollars on grant writers. We spend money on our public relations department and we now see the fruits of that. We now have state agencies asking us to manage specific projects now. We spend quality time developing partnerships and align ourselves with those funders who share the same values as we do. We have to spend more staff time with our forest managers to get through the regulatory hurdles when it comes to tribal trust lands.

Impacts, outcome, and benefits

13. What is the current status of your project(s)/ land development?

we have been successful at a lot of land management practices. We are on year ten of our newly formed cultural management team. We have been able to put fire on the ground. We have done some small scale prairie restoration, thinning, shaded fuel breaks, oak and woodland management plans, oak and manzanita treatment management, miles and miles of road decommissioning work, instream flow habitat work, beaver analog dams, along with several other projects. We have been successful with what we have been handed. We make it work.

14. What influenced the outcome of your project?

We have been successful probably because of our networking and relationship building skills.

15. Was this outcome positive or negative to the tribe? If so, in what manner and what are the impacts to the tribe?

I think it has been pretty positive. The closer we can get back to managing our traditional landscape the healthier we will be as a people. We believe we are connected to the landscape and when the landscape is deteriorating and unhealthy, we are also deteriorating as a people and that is why we continue to heal the land and bring balance back to our watersheds. We definitely see that reflected in our tribal members.

16. Are you working with specific agencies to influence a particular outcome?

Yes. We really work hard to build partnerships. We do a lot of tours and invite people to look at how we manage the land. We try to work with the BIA and politicians so we can influence the regulatory process as much as we can. The systems are so engrained and molded to this regulatory process that currently exists that agencies like the BIA don't do anything to make changes due to their comfort. We are seeing more progress on the state side. Governor Newsom has provided opportunity for us to express our concerns. The state is shifting their view of tribes and viewing us more as partners and co-sovereigns. The BIA has

a mentality as if they are supposed to look over us manage us but they are not actually doing that.

- If so, what is their response and how does it impact tribe?

We have been able to establish good working relationships with the state agencies and are treated as an equal. The BIA treats us as they are overseeing us.

17. Who benefits from the project(s)/land development?

The tribal membership

18. How are they impacted when a project or land development is not implemented due to the inability to work out regulatory/compliance laws?

As far as our trust land, we have not seen a lot of progress. The people suffer because they have unhealthy land and water and this causes sickness.

Collaboration

3. Do you work with any agencies to discuss the pros and cons of regulatory/compliance laws that impact your projects?

Yes. We have discussed this a lot with our federal partners and state partners as well. I think another piece we do successfully on the state side is to use the tribal natural resources department as a training ground. We hired a lot of really young people to work for us and when they reach the state or federal system to work, we are able to have people in the agency that understand us. It doesn't work as well on the federal side. With the BIA, we don't see that younger more forward thinking people coming up into management positions and directory positions in the federal system. We see way more young forward thinkers who have experience working for tribes in these agencies. They don't really expand in the BIA. Hopefully they will start getting some stuff done but we haven't seen it yet.

- If so, are there proposed changes that are being made by you or the agency as to how to implement project(s)/land development in the best interest of all parties?

We try to bring young, forward thinking individuals to the tribe to gain work experience and learn about our traditional forest management knowledge in hopes they will go work for the state or federal agencies and help change the system.

APPENDIX II(iii) – Questionnaire 0-0003

Native American Forest Management/Trust Land Development Project Interview Questions

Date: 04-11-2022
Time: 7 AM
Place: Hoopa Valley Indian Reservation via Phone
Name:
Field Code Number: 0-003
Tribal Affiliation: Hoopa Valley Tribe

**Name will be associated with the field code number. The name will not be included in the thesis, only the field code.

General Information:

11. What is your occupation?

12. How long have you worked in this position?

22 years.

13. What are your job responsibilities?

Responsible for writing proposals for hazardous fuels, writing burn plans for prescribed fire for activity fuels, and cultural burns as well as implantation and scope of work.

14. Do you work in a specific department or with several other departments?

I work for the forestry department which has a Timber, Silviculture, Planning, Wildlife and Fuels departments under it.

Tribal Trust Land Management/Development

26. What do you know about Tribal Trust Lands?

Tribal trust land are land that are held in trust for tribes by the federal government.

27. Do you manage projects on Tribal Trust Land?

Yes.

28. What Type of Project(s) do you manage or participate in? Are you familiar with implementing forest management or Native American land management/land development projects on Tribal Trust Lands?

I manage fuels projects (hazardous fuels reduction, cultural projects, prescribed burning) in the forested areas that are within the boundaries of the tribes lands. The tribe operates under an approved forest management plan and fuels management plan.

29. What regulatory/compliance laws are you implementing projects under?

25 CFR Part 163 General Forestry Regulations.

30. How do these regulatory/compliance laws influence your project(s) outcome?

They set the minimum standard on what has to be done.

31. What is the timeframe to complete the regulatory/compliance law process?

As far as the tribe submitting their documentation for a project approval, it takes us no longer than six months if the project requires an environmental assessment (EA). If the project only requires a Categorical Exclusion (CE) then it normally takes less than a couple of weeks on the tribal side.

32. What is the legal timeframe an agency has to review your project and how does this impact the outcome of your project(s)?

I do not believe there is a legal time frame. Our tribe would like to see time frame if set be adhered to by the federal agency. Currently the federal agency takes to long to review some projects such as burn plans.

33. Are there impacts to untimely processes?

For burn plans its sets implementation back anywhere from weeks to months which has fiscal impacts both short and long term.

Tribal Trust Background

19. What does Tribal Sovereignty mean?

To me it means that the tribe makes its own regulation and governs itself. It means that the tribe has the means to stand on their own.

20. What are the benefits of Tribal Sovereignty to Native American Tribes?

Under sovereignty the tribe can govern themselves to a point, they still need to follow federal guidelines as a minimum standard.

21. Are there negative impacts to Tribal Sovereignty?

Not that I know of.

22. What type of funding do you receive to implement your projects(s)/land development?

Tribal dollars generated from timber sales, Department of Interior (DOI)/Bureau of Indian Affairs (BIA) hazardous fuels reduction grants, Cal Fire grants and USDA Natural Resource Conservation Services (NRCS).

23. Are there sufficient resources available to fund your land management project(s) or do you fund them yourself?

The tribe has to be creative and mix funding pots through different grants and tribal dollars such as timber sale revenue.

- If so, how do you fund them?
Money made through economic development.

24. Are there additional expenses associated to managing Tribal Trust Land?

Indirect funding must also be accounted for within project dollars.

Impacts, outcome, and benefits

19. What is the current status of your project(s)/ land development?

Most project submitted to the DOI/BIA are complete that were funded by the agency. Tribally funded projects are ongoing and Cal Fire projects are at the beginning on the most recent award and at the end of the first award.

20. What influenced the outcome of your project?

Need, tribal input and grant requirement.

21. Was this outcome positive or negative to the tribe? If so, in what manner and what are the impacts to the tribe?

Positive. The tribe has the benefit of treating their land on their own to protect from unwanted wildland fire and reintroducing prescribed burning into their forest lands and accomplish cultural burning for gathering and forest health.

22. Are you working with specific agencies to influence a particular outcome?

No.

- If so, what is their response and how does it impact tribe?

23. Who benefits from the project(s)/land development?

The tribal membership, land owners, adjacent agencies and the surrounding communities.

24. How are they impacted when a project or land development is not implemented due to the inability to work out regulatory/compliance laws?

Impact for fuels project not being implemented would be threat from potential catastrophic fires crossing boundaries. In addition,. the federal government created several federal agencies to implement and oversee the laws they passed which has created a exhausting process to implementing forest management or development projects on tribal trust lands. Many of these laws were created to protect resources but have actually created obstacles for Native American Tribe's to implement projects and impacts the way they manage their aboriginal lands. Many tribes are trying to continue to manage the land by using ancient historical knowledge that once left the land, water, and animal life flourishing. Getting back to the traditional way of managing their land is a much bigger and complicated process than the average person will ever realize

Collaboration

4. Do you work with any agencies to discuss the pros and cons of regulatory/compliance laws that impact your projects?

No.

- If so, are there proposed changes that are being made by you or the agency as to how to implement project(s)/land development in the best interest of all parties?

APPENDIX II(iv) – Questionnaire 0-004

Native American Forest Management/Trust Land Development Project Interview Questions

Date: 04/25/2022
Time:
Place: Via Computer Questionnaire
Name:
Field Code Number: 0-004
Tribal Affiliation:

**Name will be associated with the field code number. The name will not be included in the thesis, only the field code.

General Information:

15. What is your occupation?

16. How long have you worked in this position?

17. What are your job responsibilities?

I help plan for future timber sales and other forest management projects in accordance with our Tribal Forest Management Plan, prepare environmental documents and coordinate Interdisciplinary Team activities to ensure compliance with NEPA policies, and oversee forest inventory data collection and analysis.

18. Do you work in a specific department or with several other departments?

Hoopla Tribal Forestry Department

Tribal Trust Land Management/Development

34. What do you know about Tribal Trust Lands?

These are tribal lands that are held in trust by the federal government for the use of the Tribe, meaning the government technically “owns” the legal title of the lands but the Tribe holds the beneficial interest. Part of the trust responsibility on the US government includes a fiduciary obligation to support tribal governments and protect tribal trust lands and resources.

35. Do you manage projects on Tribal Trust Land?

Yes, a majority of our projects are on tribal trust land.

36. What Type of Project(s) do you manage or participate in? Are you familiar with implementing forest management or Native American land management/land development projects on Tribal Trust Lands?

I'm primarily involved with the planning phases of timber sales and various forest health-related projects (e.g. fuel reduction, pest/invasive species management, rehabilitation/restoration projects, etc.). Yes, our department as a whole is responsible for implementing forest management on Hoopa Tribal lands as guided by our Tribal Forest Management Plan.

37. What regulatory/compliance laws are you implementing projects under?

Most of our regulatory/compliance laws all tie back into 25 CFR 163, and the Planning Department at Forestry mostly deals with satisfying any NEPA requirements for environmental compliance under the CFR (e.g. proposing projects eligible for Categorical Exclusion or preparing Environmental Assessments for approval by the BIA). We also ensure all projects are in accordance with our Tribal Forest Management Plan.

38. How do these regulatory/compliance laws influence your project(s) outcome?

These laws require our projects to go through various review and approval processes with the federal government (specifically BIA Forestry and Wildland Fire Management) which may influence project implementation, outcomes, and timelines as we are unable to begin projects prior to final approvals. Sometimes the review process can be lengthy in time and if any edits/changes are needed or additional documentation is requested that can push the implementation timeline out even farther.

39. What is the timeframe to complete the regulatory/compliance law process?

This highly depends on the type of project, for example to satisfy NEPA requirements smaller projects that are eligible for Categorical Exclusion have sometimes been reviewed and approved within 1-2 months (barring no major issues with the documents we provide) while Environmental Assessments require a more in-depth review and can take much longer.

40. What is the legal timeframe an agency has to review your project and how does this impact the outcome of your project(s)?

As far as I'm aware I don't think there are any set legal timeframes for an agency to review our projects although I believe they sometimes have general targets for review timeframes, I'm not totally sure on this matter though. Timeframes for review can impact our implementation timelines, which can sometimes impact project outcomes depending on the nature of the project if seasonality is a factor.

41. Are there impacts to untimely processes?

Yes, untimely processes of review/approval can lead to project delays, or even failure to implement projects that are time-sensitive (e.g. a burn that must be completed under specific weather conditions, or a salvage timber sale or other logging activities).

Tribal Trust Background

25. What does Tribal Sovereignty mean?

In a legal sense tribal sovereignty means that Tribes have a right and the authority to govern themselves, meaning create their own laws, policies, government systems, and so forth. In practice I think it's also important for the US government to recognize and respect the distinct differences between each Tribe and for Tribes to be able to strengthen our individual identities through our governing practices.

26. What are the benefits of Tribal Sovereignty to Native American Tribes?

Tribal sovereignty allows us to govern our people and lands based on our own value systems and the best way we see fit for ourselves. This benefits Tribes because we are able to retain cultural aspects of the way we live and carry forward historical or traditional beliefs and teachings. Various US laws and policies in the past have promoted genocide and/or assimilation of Tribal peoples, however, establishing Tribal sovereignty recognizes the political and cultural differences of Tribes and gives some authority back.

27. Are there negative impacts to Tribal Sovereignty?

One thing that negatively impacts tribal sovereignty is the legal notion that Tribes are "domestic dependent nations," which drives the paternalistic relationship between Tribes and the US government. This can be described as being quasi-sovereign, and hinders our abilities to exercise full sovereignty and take actions without review/approval by government authorities first.

28. What type of funding do you receive to implement your projects(s)/land development?

We receive funding from various sources such as BIA compact funding, federal or state grants and contracts, revenues from our own Tribal timber sales, and others.

29. Are there sufficient resources available to fund your land management project(s) or do you fund them yourself?

We must provide and/or seek out and apply for supplemental funding in addition to resources provided by the BIA as that funding alone is not sufficient to plan and implement our projects. Even within the Planning Department we are using outside funding sources to support work that is legally required to be completed (e.g. NEPA assessments and documentation) in order for us to implement projects. As far as I've heard other departments within Forestry also find themselves up against unfunded mandates that we must adhere to even if there is no funding support for it.

30. Are there additional expenses associated to managing Tribal Trust Land?

Expenses include (at least) administrative costs, planning costs, and implementation costs which all must be covered in order to successfully

complete projects. Some projects also include other costs such as post-treatment monitoring.

Impacts, outcome, and benefits

25. What is the current status of your project(s)/ land development?

As a whole the Forestry Department has a number of projects that are all at various stages of planning and implementation, including timber sales, forest health projects, fire rehabilitation, fuels reduction, conservation projects, collaborative projects with adjacent land owners such as the USFS and BLM, and others. The Planning Department within Forestry has at least some level of involvement with most projects, particularly during planning phases.

26. What influenced the outcome of your project?

Generally some of the biggest influences on project outcomes are the availability of funding, resources, and workforce. If we lack in any of these areas some projects are unable to even make it off the ground, or we may have a hard time bringing them to completion in a timely manner.

27. Was this outcome positive or negative to the tribe? If so, in what manner and what are the impacts to the tribe?

Since all of our projects are developed in accordance with the Tribal FMP, I believe the project outcomes are generally positive to the Tribe. The goals and objectives of the FMP itself were created with input from the community and Tribal leaders along with natural resources specialists. Most of our projects focus on forest sustainability and providing various resources to the Tribe.

28. Are you working with specific agencies to influence a particular outcome?

Some of our projects are supported by outside agencies, such as our current Forest Health grant projects that are administered through CalFire. However this is merely funding support and CalFire representatives are not deeply involved with project planning or implementation.

- If so, what is their response and how does it impact tribe?

For these specific projects CalFire has been very supportive of project implementation under the Tribe's leadership and development of the projects since our overall goals and objectives align with the grant goals. This has allowed us to implement impactful forest health projects beneficial to the Tribe without financial costs to the Tribe.

29. Who benefits from the project(s)/land development?

The tribal membership (current and future) benefits the most from these projects, although others that live on the reservation as part of the Hoopa community also benefit from certain projects that are focused on community protection from threats such as wildfire.

30. How are they impacted when a project or land development is not implemented due to the inability to work out regulatory/compliance laws?
There are both short term and long term impacts, depending on the type of project that fails to reach implementation. For example, a failed timber sale directly impacts upfront logging revenues that the Tribe may depend on. Or a failed fire/insect/disease prevention project could lead to a higher risk of losing large portions of our forest and forest/cultural resources in the future.

Collaboration

5. Do you work with any agencies to discuss the pros and cons of regulatory/compliance laws that impact your projects?
I believe people in our department have had these types of discussions with some agencies, however I haven't directly been involved with them much yet so I'm unsure.
- If so, are there proposed changes that are being made by you or the agency as to how to implement project(s)/land development in the best interest of all parties?

APPENDIX II(v) – Questionnaire 0-005

Native American Forest Management/Trust Land Development Project Interview Questions

Date: 04-11-2022
Time: 3 PM
Place: Via Phone
Name:
Field Code Number: 0-0005
Tribal Affiliation: Hupa

**Name will be associated with the field code number. The name will not be included in the thesis, only the field code.

General Information:

19. What is your occupation?

Homemaker.

I am on the cultural committee for the Hoopa Forestry Department and a dance leader.

20. How long have you worked in this position?

I recently joined the committee. I don't go to too many places because of covid and I am an elder.

21. What are your job responsibilities?

I share my knowledge on traditional land management and how my family has done things. We don't get to do a lot of burning or cleaning the forest anymore. I have spent most of my life with my family in the mountains going to the lakes, creeks, and our hunting camps.

22. Do you work in a specific department or with several other departments?

I only talk to forestry staff because they are responsible for managing our land.

Tribal Trust Land Management/Development

42. What do you know about Tribal Trust Lands?

I know that trust land is land that we live on and it's the land that we have left after the government took it all. The federal government damaged the world by eliminating the way Native Americans once managed the ecosystems. When the White People came to this land the Federal Government named it the United States of America. The entire land base was previously divided up into distinct land tracts and managed by individual tribes. The Native American People, to this day, express how they have managed the

land since time immemorial. We believe the lessons of how to manage was given to us through spiritual connections and then orally passed down for thousands of years. When they killed our people and took our land for the purpose of greed, they instilled a different style of land management to our land. Not a style the Native Americans find appealing but rather destructive. The United States government took control of most of the land and eventually created federally funded programs like the United States Forest Service and the Bureau of Land Management to oversee and manage the land. The federal government did not identify the way we once managed the land as useful or profitable so they did away with the ancient style of resource management and turned to their own. We were cheated out of our land through forced removal and taxation by the government. We were brutally murdered if they did not follow the new laws that were formed to manage us. Our people were forced to restructure their lifestyle from what the white man called, "savage," to a life of Christianity which they called the civilized way of life. The language and our religion of managing the land was stripped away right before our eyes

43. Do you manage projects on Tribal Trust Land?

My family does. They do cultural burning when they can and we gather most of our materials on trust land.

44. What Type of Project(s) do you manage or participate in? Are you familiar with implementing forest management or Native American land management/land development projects on Tribal Trust Lands?

There are a lot of forest management plans the tribe has but the federal government passed many laws that do not let the tribes manage our land like we need to. They passed laws to protect land and water and ended up making laws that negatively impacted Native Americans. The places that we have raised our children are high up in the mountains in the Trinity Summit. This was once our land and now the Forest Service manages it so we have to follow their rules. We hunt here but we can only hunt once a year because of their laws. We are hunting people and have always hunted and gathered for our foods. The government should not stop us from doing this all year but we always have to feel sneaky by doing what we feel is right. The government should let us manage our land the way we want to because they are destroying it and it is very scary to be way back in the forest knowing a fire can break out at any time and there is no safe place to go. In the old days we would burn a lot and the forest was overgrown like it is now. There were meadows, open meadows where my children would fish in the streams but now you can't get to those places because it's all overgrown. I grew up fishing and canning with my grandparents and raised my kids the same way but now my great grandkids hardly ever see fish anymore. They see a lot of moss in the river because the water is being contaminated by all of the people who live in these counties and the government sends our water down south. The water is too hot for our fish. They are all dying off and so are we.

45. What regulatory/compliance laws are you implementing projects under?

I don't have anything to do with that.

46. How do these regulatory/compliance laws influence your project(s) outcome?

From what I am told some projects don't happen because the BIA gives us problems. They always tell us we can not do things we want to do. There is a lot of politics.

47. What is the timeframe to complete the regulatory/compliance law process?

I don't know but it must take forever.

48. What is the legal timeframe an agency has to review your project and how does this impact the outcome of your project(s)?

I don't know.

49. Are there impacts to untimely processes?

There are impacts to any untimely process'. That's what is wrong with our world, everyone works on their own schedule and nothing ever gets done.

Tribal Trust Background

31. What does Tribal Sovereignty mean?

It means that we should not have any outside governments telling us what we can and can't do. The government said we can adopt our own laws but that is not really true. We still have to follow their laws as well. We will never be free from government control and they will continue to keep destroying our resources. We can't hunt anymore and our fish are all dying off and this is all the governments fault.

32. What are the benefits of Tribal Sovereignty to Native American Tribes?

Tribal sovereignty is just a word. We don't make the rules, the government does. It just means that we get to manage the little money they gave us for taking our land and we get to hunt and fish but there is nothing to hunt because we have little land and the fish are all dying and diseased.

33. Are there negative impacts to Tribal Sovereignty?

It doesn't work, that's the negative part because we will never be free from the BIA. From what I am told the employees at the BIA are lazy, low skilled, and don't care about helping us. They create problems for us. To be considered a sovereign tribe does not give the tribe the resources they need in order to continue historical and traditional lifestyles

34. What type of funding do you receive to implement your projects(s)/land development?

I am told we don't get enough funding to do much.

35. Are there sufficient resources available to fund your land management project(s) or do you fund them yourself?

I don't think so.

- If so, how do you fund them?

36. Are there additional expenses associated to managing Tribal Trust Land?

There are a lot of cost now days because you have to pay people instead of it being a communal activity, there is insurance and other expenses anytime we want to do anything.

Impacts, outcome, and benefits

31. What is the current status of your project(s)/ land development?

N/A

32. What influenced the outcome of your project?

N/A

33. Was this outcome positive or negative to the tribe? If so, in what manner and what are the impacts to the tribe?

N/A

34. Are you working with specific agencies to influence a particular outcome?

My family tries to.

- If so, what is their response and how does it impact tribe?

...just a bunch of slow to react people who take years to get anything done.

35. Who benefits from the project(s)/land development?

All of us. When we don't have healthy land and water then the animals and fish suffer and then we suffer. We live in poverty because we don't have the resources to take care of ourselves traditionally.

36. How are they impacted when a project or land development is not implemented due to the inability to work out regulatory/compliance laws?

We have unhealthy people because our land and water is unhealthy.

Collaboration

6. Do you work with any agencies to discuss the pros and cons of regulatory/compliance laws that impact your projects?

No

- If so, are there proposed changes that are being made by you or the agency as to how to implement project(s)/land development in the best interest of all parties?

GLOSSARY

- I. ABORIGINAL TERRITORY – A tribe’s claim to a piece of land that belonged to them before the federal government removed it from their possession.
- II. BIA – The Indian Affairs provides services directly or through contracts, grants, or compacts to 574 + Federally recognized tribes.
- III. CEQA – The California Environmental Quality Act is intended to inform government decisionmakers and the public about the potential environmental effects of proposed activities and to prevent significant, avoidable environmental damage.
- IV. CFR – The Code of Federal Regulations is the codification of the general and permanent regulations published in the Federal Register by the executive departments and agencies of the federal government of the United States. The CFR is divided into 50 titles that represent broad areas subject to federal regulations.
- V. DEPARTMENT OF INTERIOR – The DOI manages public lands and minerals, national parks, and wildlife refuges and upholds Federal trust responsibilities to Indian tribes and Native Alaskans.
- VI. EXECUTIVE ORDER – A signed, written, and published directive from the President of the United states that manages operations of the federal government
- VII. HOOPA VALLEY TRIBE - The place Hoopa
- VIII. HUPA – The people of the Hoopa Valley Tribe

- IX. NEPA – The National Environmental Policy Act (NEPA), requires federal agencies to assess the environmental effects of their proposed actions before making decisions.
- X. TRIBE – Used to reference a category of human social group. The word tribe is used to reference a social group that is aboriginal to the United States of America. The word can be used in several different contexts.
- XI. TREATY – A formally concluded and ratified agreement between countries or sovereign nations.
- XII. Trust Land – Trust land is territory, whereby one party agrees to hold title to the property for the benefit of another party.
- XIII. UNITED STATES FOREST SERVICE – Agency of the U.S. Department of Agriculture that administers the nation’s 154 national forests and 20 national grasslands. They manage 193 million acres of land.

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Title 25 - INDIANS

CHAPTER 14 - MISCELLANEOUS

SUBCHAPTER LXXX - HOOPA-YUROK SETTLEMENT

Sec. 1300i-1 - Reservations; partition and additions

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