
EXPANDING THE CULTURAL CONSERVATION TOOLBOX: NEW PARTNERSHIPS AND STRATEGIES



THIS HANDBOOK WAS PREPARED FOR THE CALIFORNIA LAND TRUST COMMUNITY AND ALL THOSE WHO CARE ABOUT THE PRESERVATION OF CALIFORNIA'S UNIQUE CULTURE, CULTURAL LANDSCAPES AND HISTORY, UNDER A GRANT FROM THE NATIONAL TRUST FOR HISTORIC PRESERVATION AND SAVE OUR HERITAGE ORGANISATION.



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About the National Trust for Historic Preservation

The National Trust for Historic Preservation is a private, nonprofit membership organization dedicated to saving historic places and revitalizing America's communities. Recipient of the National Humanities Medal, the Trust was founded in 1949 and provides leadership, education, advocacy, and resources to protect the irreplaceable places that tell America's story. Staff at the Washington, D.C., headquarters, six regional offices and 28 historic sites work with the Trust's 270,000 members and thousands of preservation groups in all 50 states.

The National Trust Western Office, located in San Francisco, provides services to eight Western states. The Western Office is committed to the preservation of the diverse cultural landscapes of the West, and encourages efforts to integrate the protection of natural and cultural resources.

About Save Our Heritage Organisation (SOHO)

Since 1969, Save Our Heritage Organisation (SOHO), a nonprofit organization, has been a powerful catalyst for preservation for our nation's heritage by raising awareness and appreciation of the architectural and cultural heritage of the San Diego region. Through education, advocacy, and stewardship, our mission is to preserve, promote and support preservation of the historical links and landmarks that contribute to the community identity, depth and character of our region.

SOHO is the only regional resource in San Diego County for owners of historic homes; it answers thousands of inquiries from the public each year. Educating the public is a large part of SOHO's mission and its success. SOHO holds annual preservation events, including the Craftsman and Spanish Revival Weekend and Modernism Weekend. These are comprehensive and cultural events that include programs such as lectures, workshops, architectural tours, art and artifact exhibitions and free resources and references. The events showcase the diverse range of architecture, history and culture of San Diego County.

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Executive Summary

There is no *Endangered Species Act* for cultural resources. Current laws place an emphasis on preserving the natural environment with little or no consideration of the cultural resources present. If cultural resources are considered, often it is with the perspective that they should be excavated, not preserved as part of the environment. With this narrow focus, an opportunity is lost to add value to a conservation project by not including preservation of *cultural* resources along with the preservation of habitat and open space.

Because the laws to protect cultural resources are insufficient, additional protections are warranted. Land trusts are uniquely positioned to add these protections. In doing so, they may also strengthen the protection of the natural resources in their project.

The purpose of this document (aka, the Toolbox) is to help those working to protect *natural* resources to also protect *cultural* resources. This Toolbox will give land trusts an understanding of the issues and actions that can be brought into play to protect cultural resources; tools that might also help them preserve natural resources.

Preservation actions can vary from registering your project's cultural sites with an historic register, working closely with local tribes, or including protective language in your conveyance documents. Such language can also be crafted to provide additional protection for the natural resources in your project.

The goal of this Toolbox is to de-mystify cultural preservation and give land trusts the confidence to understand the issues and the tools necessary to put pressure in the appropriate places to provide long term natural *and* cultural resource protection for their projects. In doing so, land trusts will be playing a critical role to strengthen the protection of California's heritage.

This Toolbox is designed to be a living document. The authors and sponsors encourage land trusts to submit additional case studies and conservation tools that can in turn be used by others to protect California's unique heritage.



A ROCK OR A TOOL? THIS MANO WAS USED FOR HUSKING AND GRINDING SMALL, HARD SEEDS, LIKE SAGE, OR SOFT SEEDS OR FRUITS LIKE MANZANITA BERRIES.

PHOTO: CCRPA

1. INTRODUCTION

The rate of destruction of California's heritage is alarming. Sampson and Hector (2006: 235) estimated that over 45,000 California archaeological sites have been lost since 1973, with the rate increasing each year as lands suitable for ancient cultures become converted to the uses of modern culture. This troubling statistic does not bode well for our nation's sense of its history; a community that has lost its past is as tragic as a person who has lost their memory. How do we make sure that our past is preserved?

First of all, it is important to define what California's heritage consists of. The term "cultural resources" is used by professionals in the environmental field and by federal and state agency staff to capture the universe of human activities: prehistoric archaeological sites, historic archaeological sites, historic buildings and structures, traditional places, and sacred lands.

Prehistoric archaeological sites

These areas are the living places of people before contact with European cultures. The oldest prehistoric sites in California have been dated to nearly 15,000 years ago. The point of contact varies with location; in San Diego, it is interpreted as 1769, the founding of the first Spanish mission. Prehistoric sites may include villages with soil deposits that have evidence of human discard (midden) and flaked stone tools; quarries where the stone was obtained and processed; bedrock milling areas where materials were processed for food or other uses; temporary and seasonal camps; rock art and ceremonial locations; and other evidence of prehistoric use.

Historic archaeological sites

After the point of contact, western civilization quickly started leaving its material culture behind. Historic archaeological sites can include refuse dumps with ceramics, nails, lumber, and glass; structure remains from adobes and other buildings, old roads, lumber mills, mines, prospects, trails, Civilian Conservation Corps camps, railroad construction camps, and many other types.



THE LANDSCAPE WILL TELL A STORY ABOUT OUR PAST. THESE ROCK SLICKS ARE EVIDENCE THAT NATIVE PEOPLE SEPARATED LOCAL GRASSES FOR USE AS FOOD.
PHOTO: RICHARD HERRMANN

Historic buildings and structures

Standing structures such as ranch houses, wells, fence lines and corrals, barns, root cellars, cisterns, dams, and other above ground features are included in this category. Architectural resources such as World War II military structures, houses associated with historic persons or events, and entire historic communities are also included.



HISTORIC STRUCTURES ARE AN IMPORTANT PART OF CALIFORNIA'S HERITAGE.

PHOTO: SAVE OUR HERITAGE ORGANISATION

Traditional places

These are locations where traditional groups practice. Gathering places for plant materials used in basketry, areas where medicinal plants are cultivated and harvested, locations for obtaining obsidian and stone used in tools manufacturing, and other places are part of this category. There may be no physical evidence of these activities.

Sacred lands

The term 'sacred land' means any geophysical or geographical area or feature which is sacred by virtue of its traditional cultural or religious significance or ceremonial use, or by virtue of a ceremonial or cultural requirement, including a religious requirement that a natural substance or product for use in Indian tribal or Native Hawaiian organization ceremonies be gathered from that particular location.

Cultural Landscapes

Most land trusts are working to preserve large natural landscapes; what they may not know is that these places are often also cultural landscapes.

Simply stated, a cultural landscape is the use of land by humans as viewed from a geographical perspective. A 19th century farm or ranch is a cultural landscape: the ranch house, the barn, the corrals and fences, the vegetable garden, the pasture, and the wagon roads. Within the cultural landscape, artifacts may be preserved from this past use: the wagons, the square-cut nails, the milk pails, and the blacksmith's anvil. Together, the artifacts and the features of the landscape combine to create a cultural landscape.

A cultural landscape can be present from the distant as well as the recent past. Native Americans created cultural landscapes with their use of the land. When we look at a natural or open space area today, particularly after the abundant rains of the winter, we see lush wetlands, oak groves, grasslands, and chaparral. There may be little obvious sign of human interference or impact on this natural beauty. Yet this natural landscape has been greatly influenced by the Indians who lived on the land for thousands of years. California's first people have described in detail how the land was managed for their benefit: burning, selective weeding and planting, transplanting, and pruning were all methods used to encourage the growth of plants useful to the Indians. An Indian village was not a group of a dozen or so brush houses; a village, or *rancheria* as the Spanish called it, was actually a large complex of residences, ceremonial and religious areas, resource processing locations, stone quarries, and plant gathering groves. The *rancheria* consisted of many acres of land, and included seasonal camps that may have been many miles away.



PEOPLE ARE PART OF THE LANDSCAPE; UNDER THIS MEADOW ONCE STOOD A VILLAGE.

PHOTO: RICHARD HERRMANN

The Spanish term *rancheria* was used to describe the relatively sedentary populations of Indian villages, where houses were arranged like a town. The Luiseño of Southern California, referring to their *rancherias*, convey a sense of resource ownership; the word for their settlements meant *every place that they owned and used* (White 1963:116). This indicates that the native concept of a settlement went beyond town or residential boundaries and into the lands that provided plant, animal, and mineral resources claimed and used by the group.

A Cultural Landscape is like a Watershed

An analogy that might make sense to modern Americans is the idea of a watershed; instead of thinking of a river as just the wet channel, a river is actually the entire drainage system, including all of the upland areas where water runs off to join the main stream. For the Indians, the *rancheria* lands included not only those lands where people lived, but ceremonial areas where shamanistic and puberty rites were held, hunting lands, seasonal gathering places far from the base camp, and managed patches of plants used for food and basketmaking. Springs, landmark rocks and mountains, ponds and lakes, and other natural areas were part of the *rancheria*.

It is very likely that the Indians of California practiced what Hildebrand and Hagstrum (1995:105) have termed "casual horticulture." This subsistence method includes burning, selective weeding, pruning and cutting, and transplanting to enhance the production and vigor of certain plant species. Anderson (2005) and Lewis (1973) documented many cases

throughout California where native people seasonally managed patches and groves of plants through burning. Although much effort is required for this strategy, the payoff is a more reliable resource base. Larger, more sedentary populations may have been developed based on the strategy.

Many of California's undeveloped lands have archaeological site density and complexity, an ideal state of preservation that make them unique opportunities to preserve an entire cultural landscape with its constituent components. Instead of saving one site here or there, conservation of the whole property will save the cultural landscape in its entire complexity, including the major villages, milling areas, and seasonal camps. Intentional preservation of all of the components of a settlement system at this level is rare in archaeology, and will make preservation of an open space area a unique contribution. In addition, the conservation project will provide a holistic presentation of the rich complexity of native culture. Understanding and preserving cultural landscapes can help enrich your natural resources project.

It is also important to consider historic landscapes. Two National Register bulletins describe the potential importance of preserving our nation's history on a large scale: Bulletin 18, How to Evaluate and Nominate Designed Historic Landscapes; and Bulletin 30, Guidelines for Evaluating and Documenting Rural Historic Landscapes. These are available electronically at the National Park Service website at <http://www.cr.nps.gov/nr/publications/bulletins/nrb18/>.

Examples of conservation of historic landscapes may include a brick kiln and brickyard; railroad tracks, trestles, and signals; a ranch with corrals, fences, barns, outbuildings, and roads; a rural homestead and garden; groves of fruit trees; irrigation ditches and canals; and battlefields. In some cases, it may be possible to preserve many elements of the past, including town sites and land grants. Aerial photographs are particularly useful in discovering historic landscape elements, and provide a clear picture of the relationships among the various components.

All of these cultural resources co-exist with natural resources in the environment. They are part of the environment; humans have been in California for at least 15,000 years, and have affected and been effected by the environment. It is not possible to contemplate preservation of land without understanding and including the human element in that preservation. Using the tools in this Toolbox in your work will enhance the level of protection for the cultural *and* natural resources in your project, and thus enhance the natural and cultural value of California.

Anderson, M. Kat

2005 *Tending the Wild: Native American Knowledge and the Management of California's Natural Resources*. University of California Press.

Hildebrand, John A., and Melissa B. Hagstrum

1995 Observing Subsistence Change in Native Southern California: The Late Prehistoric Kumeyaay. *Economic Anthropology* 16:85-127.

Lewis, Henry T.

1973 *Patterns of Indian Burning in California: Ecology and Ethnohistory*. Ballena Press, Ramona, California.

White, Raymond C.

1963 Luiseño Social Organization. *University of California Publications in American Archaeology and Ethnology* 48(2): 91-194. University of California Press.

2. WHAT ARE THE ISSUES?

Cultural Resources do not have the same level of Protection as Natural Resources

Unfortunately, there is no *Endangered Species Act* for cultural resources. Current laws place an emphasis on preserving the natural environment with little or no consideration of the cultural resources present. If cultural resources are considered, often it is with the perspective that they should be excavated, not preserved as part of the environment. With this narrow focus, an opportunity is lost to add value to a conservation project by not including preservation of *cultural* resources along with the preservation of habitat and open space.

No Rest for the Dead

One of the most troubling aspects of continued land development is the excavation of ancient (and not so ancient) burial grounds. Currently, Native American burial grounds are not protected as cemeteries (although legislation has been written that would protect burial grounds as other cemeteries). In southern California, recent years have seen the removal of human burials that were in the way of development or, in one case, of habitat restoration. It appears to be particularly difficult for non-federally recognized tribes (of which there are many in California) to protect their burial grounds. Federally recognized tribes, with reservations and agreements with the federal government, have additional protections that non-federally recognized tribes do not.

The state does require Native American consultation if human remains are found. The discovery of human remains requires contact with the local coroner, who then must contact the Native American Heritage Commission for a list of Most Likely Descendants (MLDs). The MLDs work with the local agency on an agreement for removal, reburial, or repatriation to another location. The general pattern is to remove the burials, and proceed with the project. Acquisition of known burial grounds as open space would protect these sacred areas.

Preservation of Cultural Resources-in place-is a better Approach

Preservation of cultural resources in place will preserve the opportunity to enhance our future knowledge of our past. Archaeological excavation has its place, but preservation in place saves the sites and their context for future generations. Research can be conducted on preserved sites, in addition to studying rocks in boxes. Studying sites within their natural and cultural setting provides a deeper understanding of the cultures that left these places. Where did these people hunt and fish? Which



THIS FENCE TELLS OF AN EARLIER TIME WHEN CATTLE RANCHING WAS AN IMPORTANT PART OF CALIFORNIA'S ECONOMY.

PHOTO: LAND CONSERVATION BROKERAGE, INC

plants were gathered? Are there remnant populations of those plants still around? How were these boulders used, were these rock walls part of their houses? Is this where their acorn meal was ground into flour? These are all questions that can only be answered by preservation in place.

If Preservation in Place is not Possible, Curation is often Required

While it may seem difficult for conservation groups focused on preserving natural resources to take on the protection of cultural and historic resources, it is a critical component of a comprehensive preservation project. Unfortunately, not only development projects can negatively affect cultural resources; even restoration projects can have an impact. When preservation in place is not an option, excavation of cultural resources may be required. At that time, curation of excavated artifacts in a qualified repository should be a part of your project budget. While it may seem daunting to add another item to an already tight budget, by reaching out to your partners in the cultural preservation world, those impacts can be minimized and the greater preservation effort enhanced. The guidelines for the curation of cultural resources can be found at <http://ohp.parks.ca.gov/pages/1054/files/guide93.pdf>

Including Consideration of Cultural Resources in Your Project can bring More Funding

Recognition and inclusion of cultural resources in a conservation plan can bring more funding and public support to the project. Public support for the preservation of the natural and cultural resources is important since often once a property is acquired access may be limited on portions of the property and this can be confusing and frustrating to the public. However, if people can understand the sensitivity of protecting their cultural heritage, which would be at risk through vandalism and pot hunting (i.e., the illegal collection of artifacts for private use), they may be more understanding and supportive of land management practices that promote long-term preservation of important natural and cultural sites; this is a fundamental issue which is often overlooked.



JUNCUS, OR WIREGRASS, IS ONE OF THE MAIN PLANTS NATIVE CALIFORNIANS USED TO MAKE BASKETS. SOME BASKETS WERE SO TIGHTLY WOVEN THAT THEY COULD HOLD WATER.
PHOTO: SAN DIEGO ARCHAEOLOGICAL SOCIETY

*Land Trusts must consider what Happens to Conservation Land **after** it is Acquired*

Land trusts acquiring land which they later sell to a public partner must consider what could happen to the land after they have transitioned the property for public use. The irony is the very act of acquiring land from private owners may subject it to harm from public practices that did not occur while the land was in private ownership. There are two

fundamental issues: the immediate-term threats associated with increased public open space or park uses and the potential that future (yet to be defined) public uses could threaten the cultural resources.

✓ *With new Public Uses, there can be Immediate Term Threats to Cultural Resources*

Land that had been previously protected by private ownership, for example, ranch lands, can become vulnerable when it comes under public ownership. As an example, after an article about the transfer of ownership of a private ranch to a conservation non-profit appeared in a local newspaper in San Diego, teenagers decided to go joyriding in the snow on the partially fenced and unprotected property. Unfortunately, the nice flat area they picked was an important archaeological site, which was damaged by their actions. The pressure is on for public access, and many agencies find it politically impossible to resist the cries for trails, staging areas, and campgrounds.

✓ *Public Ownership can lead to other Potential Future Unanticipated Threats to Cultural Resources*

Public uses can threaten cultural resources; these threats can range from hikers pocketing pot shards to the destruction of a sacred site or burial ground and the vandalism of a historic home.

Unfortunately, external forces often view public lands as an opportunity to construct a highway, transmission line, fire break, cell tower, or other incompatible use. One recent example of this is the proposal by the Orange County Transit Authority to construct a toll road across a Native American Village known as Panhe in a State Park. For at least 1,000 years part of the land set aside as San Mateo State Park and Camp Pendleton Marine Base was inhabited by the Acjachemem people known also as the Juaneño Band of Native Americans (R. Gilliland).



CULTURAL RESOURCES MAY NEED PROTECTION FROM THE WEATHER AND OTHER POSSIBLE THREATS.
PHOTO: SAVE OUR HERITAGE ORGANISATION

The large prosperous village of Panhe at the mouth of San Mateo Canyon near San Clemente was occupied into historic times. It is listed as a district in the National Register of Historic Places. Mission records show that it was a major source of the labor that made the construction of Mission San Juan Capistrano possible. The village site includes a large Native American cemetery. There is a double irony in this proposed action as the remains of Native Americans recovered as a result of

other developments throughout Orange County have been respectfully reburied at Panhe. This village site, including all the previous reburials is now threatened by the proposed toll road.

Sierra Club Sacred Sites Task Force Website:

<http://www.sacredsitesca.com/Sacred%20Sites/Sacred%20Sites.htm>

Adapted and rephrased from text on the State Parks website by Rich Gilliland, *State Park Interpretive Specialist*.

3. WHY PROTECT CULTURAL AND HISTORIC SITES?

Land trusts know why it is important to save wetlands, forests, grasslands, and mountains. But these same areas also contain historic and prehistoric cultural sites, and areas important to Native Americans and other traditional groups. Instead of looking at an old barn or fence on a property proposed for acquisition as something to remove to preserve the “natural” setting, look at it instead as part of the landscape of a place, a part of its history and how it came to be as we see it today. People are an integral part of the natural world, not a separate, unwelcome aspect. Humans and our ancestors have been in the world for millions of years, changing nature and being changed by nature; understanding our historic use of the land can prevent our future abuse of the land.

From a practical side, integrating the natural and cultural components in a protection strategy broadens your base of support to include people interested in history, prehistory, architecture, and traditional people. Communities will be interested in preserving their farming or ranching history. Tribal people may be interested in saving their traditional lands. There are also specific funding sources for preserving archaeological and historical sites that will open up more opportunities for acquisitions.



CALIFORNIA'S UNIQUE LANDSCAPES HOLD STORIES OF THE PEOPLE THAT LIVED BEFORE.
PHOTO: RICHARD HERRMANN

Tying the cultural and historical aspects of a landscape together with the natural aspects can make a preservation project more powerful and more compelling. Most people understand how important it is to save and understand human history; the human story of how people became what they are today. What they don't always know is this story exists in open spaces and historic places, in addition to buildings.

Your project will be strengthened if you also tell the story of how native people used this natural place by burning the grasses, and transplanting native bulbs and corms. In many cases, remnants of their activities can still be seen in patches of vegetation. The changing history of a town or city from a rural to an urban setting is evident in a landscape of old wooden fences, pastures, pump houses, and barns. Weaving together the cultural and natural aspects of an acquisition makes a stronger fabric for preservation. Kat Anderson's book about the use of native plants by California Indians is a good source for looking at

the activities of native people within an environment. Local histories, available in county and city libraries, can provide information about whether ranching, mining, farming, or rural homesteads were common in an area.

Appendix A presents several case study examples of how this fabric has been woven by others to strengthen the case for land conservation. In the next sections, you will learn how you can replicate that success in your projects.

4. TAKING GENERAL ACTIONS TO PRESERVE CULTURAL RESOURCES – THE CULTURAL CONSERVATION TOOLBOX

Because of the potential for increased public access to land after acquisition, it is important to take actions, as soon as possible, to protect both the natural *and* cultural resources present in your project area. Being informed is the first step. Once cultural resources have been identified, other steps can be taken.

4.1 IDENTIFY CULTURAL AND HISTORIC OPPORTUNITIES IN YOUR PROJECT

Many land acquisition projects start as efforts to prevent development and save open space for habitat or park purposes. It may be challenging for a conservation group to broaden their perspective to include cultural values. Where does a group start to obtain information about cultural places within the proposed acquisition that could help preservation?

Look at the land for its history. Are there any buildings on the land? How old are they? Are there fruit trees, eucalyptus trees, pepper trees or other remnants of landscaping that would suggest an old homestead? Are there fences, corrals, stone culverts and stream crossings to suggest use as a ranch, or farm? If the landowner is willing to help, they may have the history of the place for several generations.

Other sources for this historical element include:

- The local library's section on local history
- The local or regional historical society; make sure to look at old rancho or plat maps
- The local historic preservation organization

Traditional land use patterns. How does your group find out about the archaeology or Native American history of the land? Specific information about archaeological and traditional sites is confidential by state law, so unless you have access to a professional archaeologist your ability to get detailed information on these resources will be limited.

Contact the local college or university's anthropology department for a faculty member who may have non-confidential information

- You may have a local archaeological society that would have general information or references to the area
- The local historical society may have information



MANY CONSERVATION PROJECTS START AS AN EFFORT TO PRESERVE NATIVE PLANTS AND ANIMALS
PHOTO: MARGARET FILLIUS

- A local or regional museum will have information about the archaeology of the area
- Ideally, your group will be able to work with an archaeologist, who may volunteer some or all of their time, to conduct an inventory of cultural sites on the property

4.2 INVENTORY YOUR SITE

To protect the cultural resources, first, cultural resources need to be identified, preferably through an inventory process done by a professional archaeologist or under their supervision using trained volunteers.

Local archaeological societies, most of which have some participation by professionals and college instructors, can be very helpful in organizing inventories and training volunteers. The San Diego County Archaeological Society organizes events for volunteers to participate in inventories on public lands. Your local archaeology center may do so also or could work with you to begin a volunteer inventory program if you ask. California State Parks has highly successful volunteer cultural resource programs in various parks throughout the state. For example, the Colorado Desert District's professional archaeologists work with a large group of trained, dedicated volunteers who assist with inventories and site stewardship.



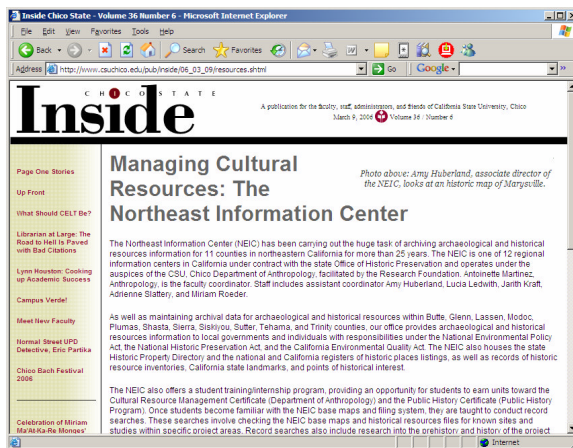
VOLUNTEERS CAN LEARN TO INVENTORY SITES WITH HELP FROM A TRAINED PROFESSIONAL.
PHOTO: CCRPA

A land trust with a cadre of trained volunteers would be able to organize and participate in an inventory under professional direction. Many professional archaeologists would volunteer to donate a limited amount of time for the benefit of preserving cultural resources. But do not expect a long-term commitment at no cost to the land trust; ask for a day or two at most to organize and direct the effort. Also, the professional archaeologist will require that volunteers sign an ethics and confidentiality pledge. Volunteers must understand that the information obtained during the inventory is confidential and that they are ethically bound not to reveal site locations nor share this information with the public at large. The Society for California Archaeology has information on their website on training site stewards, and on archaeology ethics and confidentiality.

4.3 SEEK PROFESSIONAL HELP TO RESEARCH YOUR SITE ON “CHRIS” (The California Historical Resources Information System)

The CHRIS system is administered by the State Office of Historic Preservation. It is a network of Information Centers in various locations throughout the state. Some have digitized records, and some do not. None have web access, nor is this likely given concerns about confidentiality.

All counties in the state are affiliated with an Information Center (IC), which is usually at a college or university. Records on archaeological and historical resources are kept at the IC. Each county has its own prefix; for San Diego, it is SDI; an archaeological site in San Diego County will be CA-SDI-17899, for example. In addition to this trinomial, the IC also assigns a Primary Number. The Primary Number, and not a trinomial, will be assigned to structures and isolated features and artifacts. Some counties use the trinomials as the mains designation, and some use the primary numbers.



CHICO STATE UNIVERSITY IS THE HOME OF THE NORTHEAST INFORMATION CENTER.

IMAGE: CHICO STATE UNIVERSITY WEBSITE

get access to the existing records and maps at the IC—for obvious reasons. This information is highly sensitive, and confidential; disclosure is exempt from the Public Records Act.

To find out about whether there have been previous archaeological or cultural resources studies in your area, or if there are known archaeological sites, you will need to obtain the services of a professional consultant with standing at the local IC, and request a Records Search. A USGS topographic map of the project area will be prepared by you or your consultant, and the IC will plot previous studies and known sites on the map. They will also provide copies of the site record forms. This information is confidential, and your consultant has signed an agreement to keep it confidential at the risk of their professional credentials. Work with your consultant to decide how much of this information can be divulged or used to your advantage during the grant proposal and acquisition process. If it turns out that your project area has been completely surveyed for cultural resources, and there are good records on what was found, this information is very valuable to your grant

If cultural resources are identified on your project, it will be important to record it at the IC, or find out if someone has already recorded it. The site form, referred to often as a DPR 523 form (Department of Parks and Recreation), is the basis for recording cultural resources. These forms are available online at the State of California, Department of Parks and Recreation website <http://ohp.parks.ca.gov>.

While anyone can fill out a site form and record an archaeological or historic site, only a cultural resources professional can

application or funding requests. But, you will need the assistance of a professional consultant to obtain and interpret it.

That being said, a records search from the local IC is an important first step in identifying whether there are known sites and studies within your project area. Hiring a consultant to assist with this initial step is critical.

4.4 WORK WITH TRIBES

Local tribal people may be interested in working with conservation groups to preserve their traditional lands. Indian reservations are noticing that the lands surrounding their nations are being developed, and that new neighbors are coming closer every year. Reservations may be interested in using some portion of their funds to protect the open space around their lands. In addition to Native Americans who are enrolled at a reservation, many California Indians are not affiliated with a specific reservation. These individuals may also be interested in preserving cultural landscapes and traditional lands. In some areas, you may be able to build coalitions that will include different reservations and tribes; in other cases, work directly with one individual or a group of individuals. Respect the individual and tribal interests of Native Americans; not everyone has the same culture, areas of interest, or ability to participate so don't assume. Build relationships and seek common goals and intentions.

The Native American Heritage Commission keeps a list of Sacred Lands that have been designated sacred by Native Americans (<http://www.nahc.ca.gov/>). This list is confidential, but the Commission can advise you of contacts within local tribes that may be willing to discuss these areas.

Much of the preservation focus of many California Native American tribes is on repatriation. On November 16, 1990, the Native American Graves Protection and Repatriation Act (NAGPRA) became law. This law (Sections 3001 through 3015 of Volume 25 of the United States Code) establishes procedures and legal standards for the repatriation of human remains, funerary objects, sacred objects and cultural patrimony by federal agencies and certain museums, educational and other institutions, and state and local governments. The law also recognizes certain tribal, Native Hawaiian and individual rights in regard to burial sites located on federal and tribal lands. In general, the Act is based upon the unique relationship between Native Americans and the federal government. NAGPRA provides various repatriation, ownership and control rights to Native American individuals and families who are lineal descendents of a deceased native individual and to Indian tribes and Native Hawaiian organizations. See <http://www.cr.nps.gov/nagpra/> for more information.

5. TAKING LEGAL ACTION TO PRESERVE CULTURAL RESOURCES – MORE CULTURAL CONSERVATION TOOLS

While there is no *one size fits all* fix to protect cultural resources, there are legal steps that land trusts can take that will better protect both natural *and* cultural resources in their project.

Given that current law does not adequately protect cultural resources, unless additional protection measures are added either before, during, or after a transaction, these resources can be damaged or lost *because of your* project. While this is certainly not what a land trust intends, it can be the result. This is especially true with large ranch transactions; time and again it has been shown that taking land out of a private ranching status and opening it to public uses threatens cultural resources.



VANDALS HAVE DEFACED THIS HISTORIC HOUSE.
PHOTO: SAVE OUR HERITAGE ORGANISATION

If a cultural resources inventory is not possible before acquisition, language should be added in the deed or through a memorandum of understanding to protect the cultural resources pending a complete inventory and preparation of a cultural resources management plan. Such language could be as simple as a requirement that a cultural resources management plan be created and implemented by a trained historian or archaeologist prior to the property being available for public use.

More detailed directives could restrict trail construction to less sensitive areas; protect known cultural resources by establishing cultural preserves or areas of critical environmental concern; and establish compatible public uses for the project area that will not adversely affect the cultural resources. If private money will be part of the transaction, that money could be used to leverage language in the conveyance or associated documents to make certain that the cultural (and natural) resources are preserved in perpetuity.

While every future bad idea cannot be anticipated, present day land trusts that take time during a transaction to include language in the conveyance or associated documents to protect these properties, will provide an important tool that can be used in the future to make sure the purpose for which these properties were acquired will be realized.

A discussion of different legal tools that can be applied to protect natural and cultural resources follows. Additional good reference sources for your use include The Land Trust

Alliance (LTA.org) Conservation Easement Handbook and in Appendix B, an easement developed for the Department of Fish and Game (DFG) that could be modified to protect cultural resources. Please note: if the DFG easement is to be used for transfer to DFG, consult closely with DFG before making substantive changes to the easement because variations from the form can slow or prevent DFG acceptance.

Of course, any language added to conveyance documents should be included with the assistance of an experienced real estate attorney.

5.1 EASEMENTS-ESPECIALLY CONSERVATION EASEMENTS

An easement is the right one person or a group of persons has/have in another's land. The most common are road easements neighbors have over adjacent property. But easements are limited only by imagination and fashioning them to be enforceable. Thus easements can protect views, permit water or other utilities, and most importantly here, require or prevent specified uses such as uses incompatible with a conservation objective.

For all easements and deed restrictions (described next), the following are the logical steps to take: determine exactly what it is that is to be protected, frame it in terms of any conservation statutes that may be applicable, determine which of the possible enumerated grantees is to receive the easement, negotiate the easement with the property owner, and have an attorney draw up the easement.

A conservation easement is a special tool created by a legislature that creates a right in the grantee to protect land "in its natural, scenic, historical, agricultural, forested or open space condition." Civil Code Section 815.1. The grantee, that is the one who owns the protecting easement, may either be the state, a county, city or other local governmental entity, a California Native American Tribe, or any 501(c)(3) tax exempt organization that has as its purpose the preservation, protection or enhancement of land or historic and cultural resources. Civil Code Section 815.3.

5.2 DEED RESTRICTIONS

Easements and deed restrictions are similar in that the use of land is restricted. Easements are often generated by a property owner who retains basic ownership. Deed restrictions occur when one sells or gives land to another. Thus, if an owner of two adjacent parcels sells one, s/he can retain the right to use a specified road over the land being sold. As a practical matter, this is the same as the creation of an easement.

Deed restrictions have commonly been used to prevent certain uses, such as liquor sales, or to mandate certain uses, such as a church. Thus a deed restriction could be used to

protect a cultural resource. For example, an Indian village site that must never be built on but must instead be protected as an Indian cultural site.

A deed restriction with a *condition subsequent* is the hammer that keeps a deed restriction viable. A condition subsequent gives the grantor (or the grantor's heirs, or other specified group or entity) the right to petition the appropriate court to seek a return of the land because the condition is not being complied with, or is clearly being threatened. Conditions subsequent have to be carefully drafted because courts disfavor them and look for ways to strike them down.

5.3 TRUSTS

A trust is created by an owner of a property, the trustor, by granting the property to a trustee or trustees who are under a fiduciary¹ duty to comply with the wishes of the grantor as specified in the trust document. A trust almost always involves three parties, the third party being the beneficiary or beneficiaries. The most common trust in use is a mortgage on land, where the trustor is the owner/borrower, the trustee is a neutral third party, and the beneficiary is the lender. The trustee has the power to sell the property if the beneficiary isn't being paid. In historical preservation, the trust document can spell out exactly and in great detail the purpose of the trust, say to preserve an Indian village. The trustor would be the person owning the land (which could be a person or entity who acquires it and immediately records the trust document). The beneficiaries could be Indians of a certain tribe and their descendants. And the trustee could be a government agency or a non-governmental agency, such as a land trust, that has strong likelihood of continued existence.

Both the grantor and the beneficiaries have the right in court to enforce the terms of the trust. Thus the keys to using a trust as a means of preserving a cultural resource are (1) developing the terms of the trust; (2) defining the beneficiary or beneficiaries who will be around a long period of time to see to the trust's enforcement; and (3) picking a trustee that will not only assume the responsibilities specified in the trust but will be in existence for a long period of time. The latter problem can be dealt with by specifying successor trustees, other named organizations that will take over the role of the trustee should the first go out of business.

5.4 PLACE YOUR SITE ON A HISTORIC REGISTER

Many funding sources for historic preservation require that the project area be designated on some kind of historic register. For example, state bond acts, which are competitive, usually require local, state, or national historic register designations. Originally started as lists kept by historical societies or cities to identify historic properties, historic registers now

¹ A fiduciary duty is to act in the highest good faith toward the principal and not to obtain any advantage over the latter by the slightest misrepresentation, concealment, duress or pressure.

provide tangible benefits such as tax exemptions or reductions, and access to special funds. For example, properties listed as National Historic Landmarks are eligible for special funding through the National Park Service.

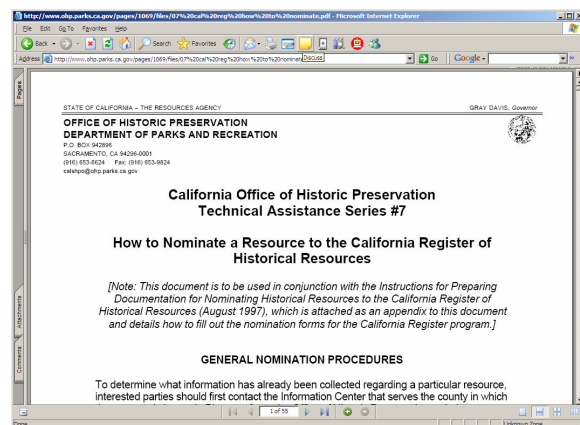
✓ *Place your site on a Local Historic Register*

Most counties and some towns and cities have registers of historic locations, which include archaeological sites. Each register has different criteria, but all are based on the importance of the resource to local or regional history; association with an important person or event; distinctiveness of the architecture if it is a building; and its integrity (that is, usually it must be largely intact and not partial or disturbed). Listing on a local register can sometimes delay demolition or destruction of a building or site.

Listing can also provide tax benefits to those who list and reside in a historic home by reducing property tax under the Mills Act. Getting a resource on the local (county or city) historic register is a first step to recognition of the importance of the site or area. Contact your county or city offices to learn their criteria and process for placing your site on a local historic register. Placement on a local register is also the first step in recognizing the importance of the cultural resource; it provides a basis for the next level of recognition.

✓ *Is the property eligible for listing on the California Register or your state register?*

The California Register includes resources listed in or formally determined eligible for listing in the National Register of Historic Places, as well as some California State Landmarks and Points of Historical Interest. Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified in a local historical resources inventory may be eligible for listing in the California Register and are presumed to be significant resources for purposes of the California Environmental Quality Act (CEQA) unless a preponderance of evidence indicates otherwise (PRC § 5024.1, 14 CCR § 4850).



[HTTP://WWW.OHP.PARKS.CA.GOV/PAGES/1069/FILES/07%20CAL%20REG%20HOW%20TO%20NOMINATE.PDF](http://www.ohp.parks.ca.gov/pages/1069/files/07%20CAL%20REG%20HOW%20TO%20NOMINATE.PDF)
 IMAGE: CALIFORNIA STATE PARKS WEBSITE

In fact, most of the time eligibility for inclusion in the California Register is used to evaluate impacts to a cultural resource during development under CEQA. But eligibility for the California Register can also be a way to demonstrate the importance of a cultural resource.

An archeological site may be considered a historical resource if it is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California (PRC § 5020.1(j)) or if it meets the criteria. Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4852) including the following:

- (A) Is it associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
- (B) Is it associated with the lives of persons important in our past;
- (C) It embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
- (D) It has yielded, or may be likely to yield, information important in prehistory or history. Avoidance and preservation in place are the preferable forms of mitigation for archeological sites.

The argument should be made that sites identified in your project area that are eligible for the California Register should be preserved. Determination of eligibility for the California Register could be made by local government or by the California Office of Historic Preservation, part of the Department of Parks and Recreation (<http://ohp.parks.ca.gov>).

The Mission of the California Office of Historic Preservation and the State Historical Resources Commission is "to preserve and enhance California's irreplaceable historic heritage as a matter of public interest so that its vital legacy of cultural, educational, recreational, aesthetic, economic, social, and environmental benefits will be maintained and enriched for present and future generations."

The Office of Historic Preservation's responsibilities include:

- Identifying, evaluating, and registering historic properties;
- Ensuring compliance with federal and state regulatory obligations;
- Cooperating with traditional preservation partners while building new alliances with other community organizations and public agencies;
- Encouraging the adoption of economic incentives programs designed to benefit property owners;
- Encouraging economic revitalization by promoting an historic preservation ethic through preservation education and public awareness and, most

significantly, by demonstrating leadership and stewardship for historic preservation in California.

- ✓ *Place your site or district on the National Register of Historic Places*

The National Register of Historic Places is the “gold standard” for historic designations. Many state bond acts require that a project be determined eligible or listed on the National Register to apply for the funds. For land acquisitions using state bond act funds, the presence of National Register resources on the property should enhance the rank of the project.



THE NATIONAL REGISTER OF HISTORIC PLACES IS THE “GOLD STANDARD” FOR HISTORIC DESIGNATIONS.
IMAGE: NATIONAL PARK SERVICE WEBSITE

The National Register criteria are included Appendix C.

Anyone can fill out a National Register nomination form; the form is available online at <http://www.cr.nps.gov/nR/>. National Register nominations are considered by State Historical Resources Commission. In addition to designating a site or location on the National Register, a “district” or collection of associated sites or resources can be nominated. Cultural landscapes may best fit in this category. This is probably the best strategy for designation within a proposed open space acquisition, since the resources individually may not meet the criteria. Together, however, the cultural resources may combine to represent a historic landscape, a prehistoric settlement system, a series of archaeological sites occupied during the same time period, etc.

If a site is truly unique and has broad significance, it may be eligible for designation as a National Historic Landmark. There are relatively few of these nation-wide. The State Office of Historic Preservation advises and recommends sites as National Historic Landmarks. Special funds are sometimes available through the National Park Service for these areas.

One caveat: once a property is on a historic register, the use of that resource could be constrained, depending on the source of funding for future activities. For example, if a National Register District is created within a proposed open space acquisition, and then trails are proposed for construction using public funds, potential impacts to the National Register District will have to be considered as part of the environmental review process for the trails project. On the positive side, creation of the District will constrain, and to some degree control, future development and impacts, and could be used to good effect to constrain future activities within that area.

5.5 PUT PRESERVATION LAWS TO WORK ON BEHALF OF YOUR PROJECT

The basic premise of all historic preservation law is that prehistoric and historic archaeological sites constitute a unique and nonrenewable resource that is part of the legacy of all Americans. Archaeological sites, both prehistoric and historic, represent the non-written history of the lives of Native Americans, miners, homesteaders, and many other groups that created this nation.

- ✓ *Submit CEQA comment letters to assure that CEQA is being followed*

The California Environmental Quality Act (CEQA) is the primary law in California addressing cultural resources protection. One of the major drawbacks of CEQA is that impacts to cultural resources can be mitigated to a level of insignificance by a data recovery program—in other words, an archaeological excavation conducted by professionals to obtain information of scientific value. Because there is no Endangered Species Act for cultural resources, most are not protected to the level of biological resources.

It goes without saying that any development proposal should go through complete environmental review before implementation: including construction of staging areas and parking lots—even if they “only” involve leveling a disturbed area. Even proposals to open an area to use by hikers and birders should be supported by cultural resource data; highly sensitive areas may be inadvertently opened to vandalism if they are unknown to the managing agency.

While preservation is the preferred mitigation alternative under CEQA (CEQA Guidelines 15126.4 (b)(3)(A)), many jurisdictions allow data recovery and subsequent site destruction for land development. That is why it is so important for land trusts to address cultural preservation in their work; otherwise important parts of our history will be lost to future generations. If your project has a development component that requires a CEQA document, submitting comments to suggest a preservation-in-place approach could be very helpful.

- ✓ *Become familiar with the requirements of California Sacred Sites Law*

California has adopted Sacred Sites Legislation (Chapter 905, Statutes of 2004) which provides that cities and counties must consult with California Native American tribes about local land use planning decisions to ensure protection and preservation of Native American sacred sites. The law provides an exception to public disclosure for records of Native American graves, cemeteries, and sacred places. While this law is still relatively new, it could provide information that could help preserve cultural resources on or near your project. More information about the law is included in Appendix D2.

✓ *Reinforce existing cultural preservation requirements*

Most of the laws listed in Appendix D require public agencies, especially state agencies, to inventory their land or lands affected by permits they issue.

Unfortunately these inventories are not always completed.

For example, California Public Resources Code Sections 5020-5029.5 requires each state agency to formulate policies to preserve and maintain state-owned historic resources under their jurisdiction. The agencies also have the responsibility to manage the cultural resources identified on their land. However, most do not have the funding (or have inadequate funding) to do so, nor do they have cultural resources professionals (or too few) who can do the work.

Approaching an agency with this information, a process to obtain it, and a funding mechanism for managing resources once identified, is a great benefit that would assist acquisition projects. Many agencies lack the funding and/or staff to inventory and manage their cultural resources. Some agencies may lack the political will; a land trust that helps to connect an agency to potential resources to help the agency do its job will strengthen the protections on site and strengthen its relationship with the agency.

Doing so also provides a means to interact directly with the agency to assist them with resource conservation. For example, co-author Hector worked with the Department of Fish and Game (DFG) to inventory Wildlife Areas and Ecological Reserves, then prepared simple management plans to help the agency continue to preserve its cultural resources while fulfilling its mission to conserve habitat. This helped DFG apply for funding for resource protection projects, and also gave the agency information about the sensitive resources within their acquisition areas.

APPENDIX A: PRESERVATION CASE STUDIES: WHERE CULTURAL AND HISTORIC RESOURCES MADE A DIFFERENCE

A.1. COWELL RANCH – CONTRA COSTA COUNTY

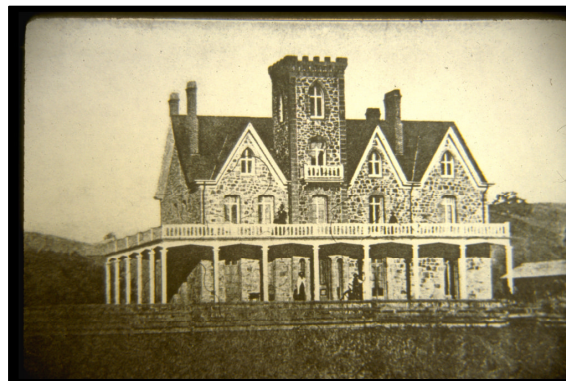
How a historic Ranch House helped save 4000 acres from development.

In 2002 The Trust for Public Land (TPL) conveyed 3,647 acres to the State of California and 218 acres to the Contra Costa County Flood Control and Water Conservation District. The property is managed by the State of California Parks and Recreation and the County's Flood District. Funding was provided by State of California Proposition 12 bond funds and the Contra Costa County Flood District.

Located immediately adjacent to the City of Brentwood, one of the fastest growing cities in the state, the property was, until recently, planned for residential development. Totalling nearly six square miles, the Cowell Ranch is one of the largest, remaining undeveloped properties in Contra Costa County.

The Cowell Ranch is adjacent to a chain of existing parks and open space areas totaling more than 80,000 acres. State Parks plans to develop a new state historic park on the property surrounding the historic John Marsh house. The rest of the property will be managed primarily for habitat purposes, but several hiking trails are planned.

The stone house, as a symbol, represents one of the most dynamic periods of California history. When restored, the house will add value to the acquired site and is seen as essential to attracting and revealing this history to a broad base of visitors. There had been great reluctance to restoring the house until an adequate amount of land could provide a proper historic setting, a buffer and a site for a wide range of activities.



MARSH HOUSE, 1860
PHOTO: JOHN MARSH HISTORIC TRUST

The John Marsh Historic Trust, the S.H. Cowell Foundation and other supporters of the house funded the making of a video used to promote the sale and acquisition of the larger tract of land. The Trust also produced a brochure and rallied the large number of Friends of the John Marsh House to support the land acquisition and work for the overall park project.

The Historic Park, the adobe Marsh lived in for twenty years, and the stone house will represent and tell the story of Mexican rule, de-secularization of the missions, the gold rush and California statehood. John Marsh played a significant role in all of these events.

APPENDIX A

EXPANDING THE CULTURAL CONSERVATION TOOLBOX: NEW PARTNERSHIPS AND STRATEGIES

The John Marsh House was not part of TPL's acquisition. State Parks already owned the house and eleven acres, but TPL's acquisition reconnected the house to a significant part of Marsh's original rancho. The existence of the house was a factor in supporting the acquisition. Now that the larger land transaction is complete, the Marsh House will be the centerpiece of a future state park. The Marsh House is in a terrible state of disrepair. Thankfully, State Parks and the City of Brentwood have now committed to restoring the house.

The John Marsh Historic Trust has been a very active advocate for preservation of the house and establishment of an historic park. Prior to that, the John Marsh Memorial Society played a similar role for many years. Volunteers with Trust leadership donated materials and spent over 500 man hours weatherizing the house to slow rapid deterioration. State Parks installed some essential braces and tie rods in the early 80's but stopped before completion, and an appropriation in excess of a million dollars to restore the house was suspended. State Parks funded an all important Historic Structures Report in the early 90's. More recently, emergency repairs were completed in four areas of potential collapse with shared funding and management by State Parks and the Trust in the amount of \$285,000.

An \$800,000 grant was awarded by the CCHE, California Cultural and Historic Endowment, for stabilization of the house. The General Plan for the park and house is now underway to determine the character and use of the park and. In addition, the Trust has been successful in its own application in the second round CCHE grants and will be awarded \$200,000 to fund the planning documents, architecture and structural engineering, for the restoration of the house.

There is growing excitement in the City of Brentwood, Contra Costa County and beyond as well as State Parks and the Trust that a cultural treasure will be saved and made available as an educational and historic resource. The role of The Trust for Public Land and the S. H. Cowell Foundation in making the land available for sale was essential.

More Information

Trust for Public Land (www.tpl.org)

John Marsh Historic Trust (www.johnmarshhouse.com)

APPENDIX A

EXPANDING THE CULTURAL CONSERVATION TOOLBOX: NEW PARTNERSHIPS AND STRATEGIES

A.2. THE TOMATO SPRINGS PRESERVATION CASE STUDY - ORANGE COUNTY

How a small non-profit, a local tribe and a developer prevailed for preservation.

The Tomato Springs prehistoric village archaeological site (CA-ORA-244) is located in the foothills in Irvine. The Tomato Springs site encompasses an area of 46 acres. In addition to the scientific values, the site is one of the last remaining prehistoric villages in the region and the members of the Juaneño/Acjachemem, the Native people of Southern Orange County, consider it to be a significant traditional cultural property and sacred place of their ancestors. It is also mentioned in Spanish historic narratives as the place where the Portola Expedition camped on July 26, 1769.



THE PORTOLA EXPEDITION CAMPED AT TOMATO SPRINGS.
PHOTO: CCRPA

In June 2002, the City of Irvine amended its General Plan and approved a zone change which designated Tomato Springs for Medium Density Residential Development. The Irvine Company, the owner of Tomato Springs, was planning a residential development on the site at that time.

However, as the result of consultation with the volunteer-led California Cultural Resources Preservation Alliance (CCRPA) and representatives of the Juaneño/Acjachemem Indians, the Irvine Co. retained archaeological firms to conduct test excavations at the site to confirm the cultural and scientific significance. The studies confirmed the significance of the site and a series of meetings were held to discuss the treatment of the site.

As the result of the studies and consultations with CCRPA and the Juaneño/Acjachemem Indians, the Irvine Company has modified its proposed residential plans for the area containing the Tomato Springs site. Instead the site will be preserved as open space and additional acres adjacent to the site will be developed as a community park, community center and a reconstructed interpretive Juaneño village similar to those in Santa Fe Springs, Los Angeles and the Oakbrook Park Chumash Interpretive Center in Ventura County.

The Tomato Springs Plan will reserve an area of approximately 100 acres including the Tomato Springs site, which will be maintained in passive open space. The Irvine Company is proposing to dedicate these approximately 100 acres to the City of Irvine, and the City would assume management. Due to the collaboration of CCRPA, the Juaneño/Acjachemem people and the Irvine Company, a precious heritage site that would

APPENDIX A

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otherwise be lost will be preserved in perpetuity and the first park created in Orange County to honor the first Californians.



IRVINE COMPANY EXECUTIVES WORKED WITH THE JUANEÑO/ACJACHEMEM INDIANS AND THE CALIFORNIA CULTURAL RESOURCES PRESERVATION ALLIANCE TO PRESERVE A SACRED SITE.
PHOTO: CCRPA

As part of this joint preservation effort, the Irvine Company will construct a replica of a Native American village, educational kiosks, native plantings, trails and fund the construction of a Native American Museum/Cultural Center as part of the community park building. The City of Irvine will manage the passive open space and the adjacent community park, replica Native American Village, educational kiosks, and community park building. The specific plans for the management and protection of the site will be determined by the City Council based on the recommendation of the Community Services.

However, plans developed in discussions with the Irvine Company, CCRPA and the tribes will be included in this process and these plans include the development of a docent program using volunteers from the tribes and CCRPA who will provide educational services to school children and the community and act as stewards of the archaeological site. Sensitive portions of the site will be covered with protective soil and native vegetation in accordance with National Park Service Guidelines.

More Information:

CCRPA (www.ccrpa.org)

Juaneño/Acjachemem (<http://juaneno.com>) and (www.juanenoindians.com)

The Irvine Company (www.irvinecompany.com)

A.3 TULLOCH RANCH – THE VILLAGE OF YGUAUI - SAN DIEGO COUNTY

Can a Public Agency Maintain the Legacy of Private Stewardship?

The identification of the Native American Village of Yguai in the Cuyamaca Mountains of San Diego County is a story about discoveries yet to be made on private lands where access has been limited and controlled. Thanks to the efforts of The Nature Conservancy and California State Parks, the village of Yguai, whose exact location was unknown until recently, has been spared the fate of so many of our heritage resources—it will be saved from destruction due to urban or “ranchette” development.



THE TULLOCH RANCH
PHOTO: RICHARD HERRMANN

But, there is a paradox to the identification of Yguai: the discovery of this important village site and other archaeological sites on the ranch helped justify and support the acquisition of the land as part of Anza-Borrego Desert State Park. The desire to preserve these resources in public ownership was a large part of the motivation to acquire the property. However, with its identification and subsequent acquisition by the state, there is always the possibility of public access into the site, an area that had been protected from recurring encroachment as private land.

Now the mandate for preservation is transferred from the rancher who guarded it to the planners and resource specialists who must respond to demands for increased public access. Understanding how to identify and study unknown sites like Yguai without jeopardizing their preservation is the key to safeguarding the cultural heritage of California.

Land conservancies must consider these issues when properties are transitioned into public ownership. The goal should be that the sites such as Yguai will never be excavated or surface collected, but, rather, will remain intact. The study of the surface and features of the site will provide abundant and important information for site structure during the ethnographic period, and will serve as an example of how archaeologists can conduct important research at a preserved, unthreatened site without disturbing it.

An important tool that State Parks has in their preservation toolbox is the ability to create Cultural Preserves. Cultural Preserves and Natural Preserves are areas that the state provides with extra protection. Development is constrained, and public access is controlled. Cultural Preserves are created when the state does park planning, and cannot

APPENDIX A

EXPANDING THE CULTURAL CONSERVATION TOOLBOX: NEW PARTNERSHIPS AND STRATEGIES

be removed without a plan amendment. Establishment of a Cultural Preserve for Yguai would protect it further.

The boundaries of Cultural Preserves need to be well documented by cultural resource professionals. The state park system has professional staff archaeologists that review proposed development and evaluate the potential impacts to cultural resources from public access. These cultural resource specialists are a critical resource in the protection of the state's cultural heritage. Their expertise is available to park planners and operations/maintenance staff.

More Information:

California State Parks (www.parks.ca.gov)

The Nature Conservancy (www.TNC.org)

APPENDIX B

APPENDIX B: MODEL CONSERVATION EASEMENT

Readers are advised to review this and any other legal documents with a qualified attorney before use. All easements and legal documents should be recorded with the county recorder, whenever possible to insure the highest level of protection to your project.

Click on the following link to open the model conservation easement for the Department of Fish and Game: [StandardConsEaseDFG June2005.doc](#)

APPENDIX C: CRITERIA FOR PLACEMENT ON THE NATIONAL REGISTER OF HISTORIC PLACES

For the most current information, please see <http://www.cr.nps.gov/nR/>

Criteria for evaluation. The quality of significance in American history, architecture, archeology, engineering, and culture is present in districts, cultural landscapes, sites, buildings, structures, and objects that possess integrity of location, design, setting, materials, workmanship, feeling, and association and

(a) **that are associated with events** that have made a significant contribution to the broad patterns of our history; or

(b) **that are associated with the lives of persons** significant in our past; or

(c) **that embody distinctive characteristics** of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction; or

(d) **that have yielded, or may be likely to yield, information** important in prehistory or history.

Criteria considerations. Ordinarily cemeteries, birthplaces, or graves of historical figures, properties owned by religious institutions or used for religious purposes, structures that have been moved from their original locations, reconstructed historic buildings, properties primarily commemorative in nature, and properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register. However, such properties will qualify if they are integral parts of districts that do meet the criteria or if they fall within the following categories:

(a) **A religious property** deriving primary significance from architectural or artistic distinction or historical importance; or

(b) **A building or structure removed from its original location** but which is significant primarily for architectural value, or which is the surviving structure most importantly associated with a historic person or event; or

(c) **A birthplace or grave** of a historical figure of outstanding importance if there is no appropriate site or building directly associated with his productive life.

APPENDIX C

- (d) **A cemetery** which derives its primary significance from graves of persons of transcendent importance, from age, from distinctive design features, or from association with historic events; or
- (e) **A reconstructed building** when accurately executed in a suitable environment and presented in a dignified manner as part of a restoration master plan, and when no other building or structure with the same association has survived; or
- (f) **A property primarily commemorative** in intent if design, age, tradition, or symbolic value has invested it with its own exceptional significance; or
- (g) **A property achieving significance within the past 50 years** if it is of exceptional importance. [This exception is described further in NPS's "How To" booklet No. 2, entitled "How to Evaluate and Nominate Potential National Register Properties that Have Achieved Significance Within the Last 50 Years," available from NPS at <http://www.ci.santa-cruz.ca.us/pl/hpc/hpcsite/nationalreg.html>.]

APPENDIX D: CALIFORNIA LAWS ADDRESSING CULTURAL RESOURCES**D.1. CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

(Public Resources Code, Section 21000)

The California Environmental Quality Act (CEQA) requires that all private and public activities not specifically exempted be evaluated against the potential for environmental damage, including effects to cultural resources. CEQA defines historical resources as “any object, building, structure, site, area, or place which is historically significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military, or cultural annals of California” (Division I, Public Resources Code, Section 5021.1(b)).

GUIDELINES IN RESOURCE PROTECTION UNDER THE CEQA

Historical resources are recognized as part of the environment under CEQA (PRC §21002(b), 21083.2, and 21084.1). The California Register is an authoritative guide to the state’s historical resources and to which properties are considered significant for purposes of CEQA. The California Register includes resources listed in or determined eligible for listing in the National Register of Historic Places, as well as some California State Landmarks and Points of Historical Interest. Properties of local significance that have been designated under a local preservation ordinance (local landmarks or landmark districts) or that have been identified in a local historical resources inventory may be eligible for listing in the California Register and are presumed to be significant resources for purposes of CEQA unless a preponderance of evidence indicates otherwise (PRC § 5024.1, 14 CCR § 4850).

The California Register statute (PRC § 5024.1) and regulations (14 CCR § 4850 et seq.) require that at the time a local jurisdiction nominates an historic resources survey for listing in the California Register, the survey must be updated if it is more than five years old. This is to ensure that a nominated survey is as accurate as possible at the time it is listed in the California Register. However, this does not mean that resources identified in a survey that is more than five years old need not be considered “historical resources” for purposes of CEQA. Unless a resource listed in a survey has been demolished, lost substantial integrity, or there is a preponderance of evidence indicating that it is otherwise not eligible for listing, a lead agency should consider the resource to be potentially eligible for the California Register. However, a resource does not need to have been identified previously either through listing or survey to be considered significant under CEQA. In addition to assessing whether historical resources potentially impacted by a proposed project are listed or have been identified in a survey process, lead agencies have a responsibility to evaluate them against the California Register criteria prior to making a finding as to a proposed project’s impacts to historical resources (PRC § 21084.1, 14 CCR § 15064.5(3)).

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An archeological site may be considered an historical resource if it is significant in the architectural, engineering, scientific, economic, agricultural, educational, social, political, military or cultural annals of California (PRC § 5020.1(j)), or if it meets the criteria for listing on the California Register (14 CCR § 4850). The most recent amendments to the CEQA Guidelines try to resolve this ambiguity by directing that lead agencies should first evaluate an archeological site to determine if it meets the criteria for listing in the California Register. If an archeological site is an historical resource (i.e., listed or eligible for listing in the California Register) potential adverse impacts to it must be considered, just as for any other historical resource (PRC § 21084.1 and 21083.2(l)). If an archeological site is not an historical resource, but meets the definition of a “unique archeological resource” as defined in PRC § 21083.2, then it should be treated in accordance with the provisions of that section.

Substantial adverse change includes demolition, destruction, relocation, or alteration such that the significance of an historical resource would be impaired (PRC § 5020.1(q)). While demolition and destruction are fairly obvious significant impacts, it is more difficult to assess when change, alteration, or relocation crosses the threshold of substantial adverse change. The CEQA Guidelines provide that a project that demolishes or alters those physical characteristics of an historical resource that convey its historical significance (i.e., its character-defining features) can be considered to materially impair the resource’s significance.

Generally, a resource shall be considered by the lead agency to be "historically significant" if the resource meets the criteria for listing on the California Register of Historical Resources (Pub. Res. Code SS5024.1, Title 14 CCR, Section 4852) including the following:

- (A) Is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;
 - (B) Is associated with the lives of persons important in our past;
 - (C) Embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values; or
 - (D) Has yielded, or may be likely to yield, information important in prehistory or history.
- Avoidance and preservation in place are the preferable forms of mitigation for archeological sites.

D.2. CALIFORNIA SACRED SITES LEGISLATION (CHAPTER 905, STATUTES 2004)

Senate Bill 18 (2004) modified state planning law in several areas to require cities and counties to contact, and consult with, California Indian tribes before adopting or amending a General Plan, or when designating land as Open Space, for the purpose of protecting Native American Cultural Place. It does not cover activities on state or federal land, and is not part of the CEQA process. A Cultural Place is defined in PRC 5097.993 as a “Native American historic, cultural, or sacred site that is listed or may be eligible for listing in the California Register of Historic Places pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site on public lands.” SB 18 was signed into law in Sept. of 2004, with the main provisions taking effect on March 1, 2005. It added 3 sections to the state planning law requiring consultation, amended 5 sections of planning law to require notice, and amended one section of the civil code to allow tribes to hold conservation easements.

SB 18 provides a great opportunity to work with tribal groups to create open space lands based on traditional cultural values. Cities and counties are required to include notification to tribes in their project scoping. The Native American Heritage Commission and the Office of Planning and Research are providing leadership with guidance on this legislation. <http://www.opr.ca.gov/index.php?a=programs/tribal.html>.

D.3. SECTIONS 5020-5029.5 OF THE CALIFORNIA PUBLIC RESOURCES CODE**Public Resources Code, Sections 5020-5029.5**

Section 5020. Establishes the State Historical Resources Commission, which recommends resources for inclusion in the National Register, conducts surveys, and consults with local historical commissions. The State Historical Resources Commission (Commission) is a nine-member state review board, appointed by the Governor, with responsibilities for the identification, registration, and preservation of California's cultural heritage. The Commission meets at least four times per year in various locations around the state to give citizens an opportunity to participate in the public hearings.

The mission of the State Historical Resources Commission and the Office of Historic Preservation, in partnership with the people of California, is to preserve and enhance California's irreplaceable historic heritage as a matter of public interest so that its vital legacy of cultural, educational, recreational, aesthetic, economic, social, and environmental benefits will be maintained and enrich the lives of present and future generations.

Section 5024 and 5024.5. Requires state government agencies to inventory and protect historical structures and objects under their jurisdiction. This law requires all State agencies to consider the effect of their actions to resources listed on or eligible for listing on the California Register of Historical Resources. This includes looking at all prudent

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and feasible ways to avoid adversely impacting historical resources (cultural resources of any kind that are over 50 years of age). If avoidance proves infeasible, then ways must be designed to minimize impacts, or then mitigate only as a last resort. The State Historic Preservation Officer must be consulted before any such structure is altered or sold.

Section 5024.1. Establishes the California Register of Historic Places. The Register is an authoritative guide to be used by state and local agencies, private groups, and citizens to identify the state's historical resources and to indicate which properties are to be protected, to the extent prudent and feasible, from substantial adverse change.

Public Resources Code, Section 5097.5 (Stats. 1965, C.11362792)

Defines as a misdemeanor the unauthorized disturbance or removal of archaeological, historical or paleontological resources located on public lands.

Native American Religious Freedom (PRC 5097.9 et seq)

This code section prohibits public agencies from interfering with the free expression or exercise of Native American religion, or causing severe or irreparable damage to any Native American sanctified cemetery, place of worship, religious or ceremonial site, or sacred shrine located on public property. The only exception occurs when it can be clearly and convincingly demonstrated that the public interest and necessity require such action.

APPENDIX E: FEDERAL LAWS ADDRESSING CULTURAL RESOURCES**E.1. NATIONAL ENVIRONMENTAL POLICY ACT OF 1969 AS AMENDED (NEPA)**

[42 U.S.C. 4321 et seq]

The National Environmental Policy Act is the nation's broadest environmental law. NEPA applies to all federal agencies and most of the activities they manage, regulate, or fund that affect the environment. NEPA includes cultural resources preservation within its general policy for environmental protection. It requires the preservation of important historic, cultural, and natural aspects of our national heritage, and maintenance, wherever possible, of an environment that supports diversity and a variety of individual choices. Cultural resources are considered in the preparation of all NEPA documents. The Council on Environmental Quality established NEPA regulations, which can be found at 40 CFR §1500-1508.28.

E.2. NATIONAL HISTORIC PRESERVATION ACT OF 1966, AS AMENDED (NHPA)

Section 106 (16 U.S.C. 470f)

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under Title H of this Act a reasonable opportunity to comment with regard to such undertaking.

Section 110 (16 U.S.C. 470h-2)

Federal agencies owning or managing land must inventory and preserve cultural resources.

(a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency. Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section.

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(2) Each Federal agency shall establish (unless exempted pursuant to Section 214), in consultation with the Secretary, a preservation program for the identification, evaluation, and nomination to the National Register of Historic Places, and protection of historic properties. Such program shall ensure

- (A) that historic properties under the jurisdiction or control of the agency, are identified, evaluated, and nominated to the National Register;
- (B) that such properties under the jurisdiction or control of the agency as are listed in or may be eligible for the National Register are managed and maintained in a way that considers the preservation of their historic, archaeological, architectural, and cultural values in compliance with Section 106 and gives special consideration to the preservation of such values in the case of properties designated as having National significance;
- (C) that the preservation of properties not under the jurisdiction or control of the agency, but subject to be potentially affected by agency actions are given full consideration in planning;
- (D) that the agency's preservation-related activities are carried out in consultation with other Federal, State, and local agencies, Indian tribes, Native Hawaiian organizations carrying out historic preservation planning activities, and with the private sector; and
- (E) that the agency's procedures for compliance with Section 106-(i) are consistent with regulations issued by the Council pursuant to Section 211;
 - (ii) provide a process for the identification and evaluation of historic properties for listing in the National Register and the development and implementation of agreements, in consultation with State Historic Preservation Officers, local governments, Indian tribes, Native Hawaiian organizations, and the interested public, as appropriate, regarding the means by which adverse effects on such properties will be considered; and
 - (iii) provide for the disposition of Native American cultural items from Federal or tribal land in a manner consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act (25 U.S.C. 3002(c)).

(b) Each Federal agency shall initiate measures to assure that where, as a result of Federal action or assistance carried out by such agency, a historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records then be deposited, in accordance with Section 101(a), in the Library of Congress or with such other appropriate agency as may be designated by the Secretary, for future use and reference.

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(c) The head of each Federal agency shall, unless exempted under Section 214, designate a qualified official to be known as the "agency's "preservation" officer" who shall be responsible for coordinating that agency's activities under this Act. Each Preservation Officer may, in order to be considered qualified, satisfactorily complete an appropriate training program established by the Secretary under Section 101(h).

(d) Consistent with the agency's mission and mandates, all Federal agencies shall carry out agency programs and projects (including those under which any Federal assistance is provided or any Federal license, permit, or other approval is required) in accordance with the purposes of this Act and, give consideration to programs and projects which will further the purposes of this Act.

(e) The Secretary shall review and approve the plans of transferees of surplus federally owned historic properties not later than ninety days after his receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(f) Prior to the approval of any Federal undertaking which may directly and adversely affect any National Historic Landmark, the head of the responsible Federal agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark, and shall afford the Advisory Council on Historic Preservation a reasonable opportunity to comment on the undertaking.

(g) Each Federal agency may include the costs of preservation activities of such agency under this Act as eligible project costs in all undertakings of such agency or assisted by such agency. The eligible project costs may also include amounts paid by a Federal agency to any State to be used in carrying out such preservation responsibilities of the Federal agency under this Act, and reasonable costs may be charged to Federal licensees and permittees as a condition to the issuance of such license or permit.

(h) The Secretary shall establish an annual preservation awards program under which he may make monetary awards in amounts not to exceed \$1,000 and provide citations for special achievement to officers and employees of Federal, State, and certified local governments in recognition of their outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the president of the United States to any citizen of the United States recommended for such award by the Secretary.

(i) Nothing in this Act shall be construed to require the preparation of an environmental impact statement where such a statement would not otherwise be required under the National Environmental Policy Act of 1969, and nothing in this Act shall be construed to provide any exemption from any requirement respecting the preparation of such a statement under such Act.

APPENDIX F: ADDITIONAL RESOURCES

FUNDING SOURCES FOR CULTURAL AND HISTORIC PRESERVATION	
California Cultural and Historical Endowment (CCHE)	http://www.library.ca.gov/CCHE/index.cfm
Environmental Enhancement and Mitigation Program (EEMP)	http://resources.ca.gov/eem/
National Trust for Historic Preservation	http://www.nationaltrust.org/
Transportation Enhancement Act	http://www.fhwa.dot.gov/tea21/factsheets/te.htm

GENERAL INFORMATION (INCLUDING LAWS ADDRESSING CULTURAL RESOURCES PROTECTION)	
California Historic Resources Commission	http://ohp.parks.ca.gov/
California Native American Heritage Commission	http://www.nahc.ca.gov/
California Office of Historic Preservation	http://ohp.parks.ca.gov/
California Office of Planning and Research	http://www.opr.ca.gov/index.php?a=programs/tribal.html
National Register of Historic Places	http://www.cr.nps.gov/nR
Native American Graves Protection and Repatriation Act (NAGPRA)	http://www.cr.nps.gov/nagpra/
Non-recognized Tribes Index	http://www.kstrom.net/isk/maps/tribesnonrec.html#california
Society for American Archaeology	http://www.saa.org/
Society for California Archaeology	http://www.scahome.org/

Other Resources you Might Find Helpful

Fagan, Brian

2003, *Before California; An Archaeologist Looks at Our Earliest Inhabitants*
Rowman and Littlefield Publishers, INC

Sampson, Michael P. and Susan M. Hector

2006, *Site Preservation, Community Activism, and a Future for California Archaeology*. *Proceedings of the Society for California Archaeology* 19: 235-237.