

Sacred Bonds: Collaboration to Protect American Indian Sacred Sites

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Overview

Despite the growing influence of the UN Declaration on the Rights of Indigenous Peoples, demands for territory and national resources find most nation-states failing to meaningfully protect their Indigenous peoples' sacred sites landscapes. As with the international Indigenous peoples' human rights movement, NGOs continue to play a crucial role in sacred land conservation by raising awareness, contributing organizational legitimacy, bridging cultural divides, and developing financial resources.

The conservation trust movement traditionally focuses on the material environmental preservation and restoration of biologically rich zones or places of great natural beauty. In recent years, however, growing Western appreciation for traditional environmental knowledge (TEK) has led NGOs to increasingly value and seek out partnerships with Indigenous Peoples. Traditional environmental knowledge is of course inextricable from religious practice and obligation, which has also led to some increasing recognition of the role of non-material, sacred practices to environmental preservation.

Finally, as Indigenous peoples' human rights issue gain prominence on the world stage, the conservation movement has continued to evolve their protocols for conservation to include human rights norms.

This research and discussion builds upon the conservation trust models examined by Wood & Welcker, and then explores how Verschuuren's work on cultural and spiritual aspects of land conservation hold promise for enhanced conservation protocols in private and public partnerships within the United States.

Why Collaborate?

- Allows Indigenous communities and non-profits to pool their resources
- Lowers the cost burden for sympathetic private landowners
- In the eyes of private landowners, the prestige of well-regarded non-profits raises the organizational legitimacy of potential tribal partners
- Private partnerships may allow more privacy to tribal members for cultural and religious uses; some public projects, such as parklands or monuments, may bear high pressures for tourism or recreation.

Trust Models and Case Studies

- These models were identified and explored in *Tribes as Trustees Again, Parts I & II*, by Profs. Mary Christina Wood and Zachary Welcker (citations in bibliography)

- Conservation trusts are typically thought of as vehicles for environmental protection, but the same instruments are available to protect land for cultural reasons—even when it does not have the same environmental “value.”
1. The Tribal Holder (see Part I, pp. 403-410)
 - a. May range from fee simple ownership to holding an easement for conservation over title held in fee simple by another, private property owner.
 - b. For U.S. federally recognized tribes, raises questions of tribal jurisdiction
 - c. A defining feature is that regardless of who owns the land in fee, a conservation easement or covenant controls how the land may be used.
 - d. Often involves tribal financial contribution
 - e. May involve tribal government or entity, private landowner, and possibly NGO or public partner

Case study: Chickasaw Nation & The Archaeological Conservancy: Tchichatala

2. The Native Land Trust Holder (see Part I, pp. 410-415)
 - a. In contrast to NGO/nonprofit ownership or management by a non-Native entity, this model involves original formation of a non-profit conservation entity by American Indian or other Indigenous peoples.
 - b. The organization may be formed by a tribal government, by a consortium of such governments, or by a group not connected to any specific government.
 - c. This model may allow the greatest flexibility to manage the property according to Indigenous customs and values.
3. The Public Agency Holder (see Part I, pp. 415-417)

This public collaboration model falls outside the scope of this presentation, but public conservation trusts are a key model for the United States, despite the neglect or outright hostility shown in many development projects. Some public collaborations may also involve private partners, such as NGOs.
4. The Non-Native Land Trust Holder (see Part I, pp. 418-420)
 - a. A number of well-known and well-regarded conservation trust organizations have developed programs to partner with Indigenous peoples. (Several of these, operating both inside the United States and worldwide, are identified in the bibliography below, with mission statements and links.)
 - b. Under this model, an Indigenous community does not necessarily hold legal rights but is considered an indispensable partner and adviser to the project.

UN Declaration on the Rights of Indigenous Peoples (UNDRIP)

Now ten years old, the Declaration has already emerged as a standard-bearer for raising awareness of Indigenous peoples’ unique human rights requirements and the special challenges posed to them by global development. Key provisions for sacred site protection include:

- Article 3. Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
- Article 10. Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return.
- Article 11
 1. Indigenous peoples have the right to practise and revitalize their cultural traditions and customs. This includes the right to maintain, protect and develop the past, present and future manifestations of their cultures, such as archaeological and historical sites, artefacts, designs, ceremonies, technologies and visual and performing arts and literature.
 2. States shall provide redress through effective mechanisms, which may include restitution, developed in conjunction with indigenous peoples, with respect to their cultural, intellectual, religious and spiritual property taken without their free, prior and informed consent or in violation of their laws, traditions and customs.
- Article 12(1). Indigenous peoples have the right to manifest, practise, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains.
- Article 25. Indigenous peoples have the right to maintain and strengthen their distinctive spiritual relationship with their traditionally owned or otherwise occupied and used lands, territories, waters and coastal seas and other resources and to uphold their responsibilities to future generations in this regard.
- Article 26.
 1. Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.
 2. Indigenous peoples have the right to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.
 3. States shall give legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.

Free, Prior & Informed Consent (FPIC)

While FPIC is usually thought of as a responsibility for public partners, private conservation partners increasingly recognize FPIC as fundamental to their protocols in order to avoid unintended human rights abuses. Well-regarded NGOs are developing robust protocols for engaging with Indigenous peoples and their resources and show promise as standard bearers by treating public standards as a floor rather than a ceiling.

- The UN Declaration on the Rights of Indigenous Peoples establishes FPIC as the baseline for any state undertaking affecting Indigenous peoples, including their aboriginal territory and cultural property.
- In the US, federal executive orders from the Clinton, Bush II, and Obama administrations created a less robust—but more enforceable—FPIC standard for federal undertakings in the form of the tribal consultation requirement.
- Aspects of a robust FPIC standard include are centered upon the state’s obligation to approach Indigenous communities with the respect due to a self-determining people. In the U.S., tribal sovereignty requires approaching on a government-to-government basis, rather than in a “top-down” stance. Central features of a full and proper, FPIC-based consultation should include:
 - Engagement and inclusion from the very early stages of the undertaking, before any decisions about project parameters or approval have been made.
 - The partner’s willingness to invest in a long-term relationship with the community, and to do much of the work in making those conditions possible. Relationship-building should include the long work of building trust, especially in light of past abuses; learning about the community and its culture, resources, values, and preferences; and learning how to respectfully identify and approach traditional leadership and to engage in respectful communication.
 - The partner’s openness to compromise and commitment to avoiding human rights abuses.
 - A willingness to take “no” for an answer. Under federal and even international law, Indigenous peoples’ rights tend not to truly include the right to actual consent. Instead, it tends to be watered down to more of a due process, right-to-be-consulted standard. Private partners should hold themselves to a higher standard.

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Scholarship

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Non-Governmental Organizations (NGOs)

A number of these NGOs have developed robust protocols for working with Indigenous peoples and their cultural resources. These protocols tend not only to incorporate FPIC principles as a baseline for the initial decision-making process, but also to offer detailed models for sustainable, long-term management. These management guidelines are useful for both private and public trust holders.

- The Archaeological Conservancy
 - <https://www.archaeologicalconservancy.org/>
 - “The Archaeological Conservancy is the only national, nonprofit organization that identifies, acquires, and preserves the most significant archaeological sites in the United States. Since its beginning in 1980, the Conservancy has now preserved 500 sites across the nation, ranging in age from the earliest habitation sites in North America to a 19th-century frontier army post.”
- The Conservation Initiative on Human Rights (CIHR)
 - <http://www.thecihr.org/>
 - “Established in 2009, the Conservation Initiative on Human Rights (CIHR) is a consortium of international conservation NGOs that seek to improve the practice of conservation by promoting the integration of human rights in conservation policy and practice.”

- CIHR resources page: <http://www.thecihr.org/publications/>
- Conservation International
 - <https://www.conservation.org/How/Pages/Partnering-with-Communities.aspx>
 - “Conservation International has been working with indigenous peoples and local communities for 30 years, developing expertise, credibility and trust with our partners. One of the first organizations to develop a policy for partnering with indigenous peoples, CI recognizes the importance of full and effective participation for all communities in conservation.”
- International Union for the Conservation of Nature
 - <https://www.iucn.org/>
 - “The International Union for Conservation of Nature (IUCN) is a membership Union uniquely composed of both government and civil society organisations. It provides public, private and non-governmental organisations with the knowledge and tools that enable human progress, economic development and nature conservation to take place together.”
 - World Commission on Protected Areas (WCPA)
 - <https://www.iucn.org/theme/protected-areas/wcpa>
 - “WCPA works by helping governments and others plan protected areas and integrate them into all sectors; by providing strategic advice to policy makers; by strengthening capacity and investment in protected areas; and by convening the diverse constituency of protected area stakeholders to address challenging issues.”
 - WCPA Specialist Group on Cultural and Spiritual Values
 - <https://www.iucn.org/theme/protected-areas/wcpa/what-we-do/cultural-and-spiritual-values-protected-areas>
 - “THE IUCN WCPA Cultural and Spiritual Values Specialist Group work on all aspects of cultural and spiritual values that promote the protection of the environment and the preservation of biological and cultural diversity. The cultural and spiritual significance of nature in protected and conserved areas (CSVPA) refers to the values that different cultures, religions and the general public place on natural features of the environment that have great meaning and importance for them.”
 - Sacred Natural Sites
 - <https://sacrednaturalsites.org/about/>
 - “A dedicated Sacred Natural Site Initiative is emerging out of 14 years of work of the IUCN Specialist Group on the Cultural and Spiritual Values of Protected Areas. The Sacred Natural Sites Initiative works custodians, traditional knowledge holders, conservationists, academics and others in support of the conservation and revitalization of sacred natural sites and territories.”
 - Bas Verschuuren, Creating Common Ground: The role of Indigenous Peoples’ sacred natural sites in conservation practice, management and policy, <https://sacrednaturalsites.org/wp->

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- Library of conservation protocols:
<https://sacrednaturalsites.org/resources/library/>
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- The Nature Conservancy
 - <https://www.nature.org/ourinitiatives/urgentissues/land-conservation/indigenouspeoples/index.htm>
 - “The Nature Conservancy recognizes the significant contributions of indigenous peoples and local communities to conservation. Through collaboration across 27 countries and 750 million acres, we have fostered a shared commitment to environmental stewardship. The Conservancy’s human rights-based approach to conservation incorporates traditional knowledge and cultural values. Our approach results in tangible benefits, including the conservation and improved management of 200 million acres and measurable benefits to 700,000 people.”
- World Wide Fund for Nature
 - Founding member of CIHR (above)
 - <http://wwf.panda.org/>
 - [http://wwf.panda.org/what we do/how we work/people and conservation /wwf social policies/human rights framework/](http://wwf.panda.org/what-we-do/how-we-work/people-and-conservation-wwf-social-policies/human-rights-framework/)
 - “WWF recognizes human rights as central to achieving effective and equitable conservation and development outcomes. The policy states WWF’s commitment to respect human rights and to promote rights within the scope of conservation initiatives. This endorsement also commits WWF to implementation measures contained in the framework and their application across all of our relevant social policies.”