

Ma Phidin: Protecting Our Ground

Traditional Gathering & Harvesting Policies: Analysis and Action



**CALIFORNIA
INDIAN
MUSEUM
& CULTURAL
CENTER**

A Project of The Tribal Youth Ambassadors: A guide to local action on traditional cultural resources and food stewardship and harvesting to restore health & wellness of tribal communities.

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Introduction

Organizational History and Purpose

The California Indian Museum and Cultural Center (CIMCC) was founded in 1991 and incorporated as a non-profit organization in 1996, CIMCC is a statewide, issues-based museum that gives California Indians a voice in the telling of their histories. With the experience and transformative power of exhibits as guiding factors, the CIMCC's goal is to provide a unique educational resource on California Indians and a world class destination for the people of California, the nation and the world.

California tribes are vital communities and they continue to shape, transform and contribute to the dynamic cultural life of California and the nation as a whole. While California Native people come from diverse cultures, they have many collective historical and contemporary experiences in common. These shared experiences form the core of the CIMCC interpretive strategy. In many existing historical institutions in California, the histories and cultures of California Indians are generally presented through artifact-based exhibitions focusing on past histories. While the past is considered, the CIMCC uses contemporary California Indian oral testimonies to illuminate underrepresented threads of California Indian collective experiences viewed through the context of statewide and national issues. California Indians have always relied on their oral traditions to express their histories and cultures. These oral traditions have mostly been shared inter-tribally with limited access by the general public.

CIMCC enriches the public by providing Native perspectives. Using storytelling conveyed through sophisticated, interactive multi-media, the museum helps visitors explore the collective experiences of California Indians statewide.

The primary interpretive strategy of using Native storytelling is not only culturally- appropriate, oral histories are also the best means for showing the diversity and complexity of California Indian cultures and the strength of California Indians to overcome extreme adversity. Only through oral histories relaying the emotions that occurred over time can people fully grasp the contemporary experience of California Indians and share in our knowledge and our bright hopes for the future.



CIMCC creates exhibits and programs for the public to learn about tribal perspectives and where Native Americans can proudly view California Indian contributions to civilization. CIMCC's work as a cultural institution reaches beyond traditional museum roles of education, resources and preservation. It is our goal to provide a forum for civic space, a dialogue for ideas that impact the history and future of American Indians. CIMCC is a place to address important issues impacting tribal communities throughout country and the state.

Tribal Community Profile

There are over 12,000 Pomo tribal members and descendants from 23 Pomo tribes in CIMCC's service area. Their traditional territory in the tri-county service area of Sonoma, Mendocino and Lake Counties spans over 6,400 square miles. Community members are somewhat isolated from each other on a regional level because of geography but they maintain close community ties. While



the Pomo tribal communities are separate, sovereign nations today, the community as a whole is related inter-tribally through marriage, social affiliations, cultural traditions and the 7 Pomo languages. CIMCC's vision as expressed in our strategic plan, "to be a living tribute to California Indians, their cultures, lifestyles, and strength in overcoming extreme adversity", anchors our strategic plan to our tribal audiences and their cultural continuity. Nutrition related chronic disease is an extreme adversity to Pomo tribal communities. Tribal community member, Meyo Marufo, summarized this issue by stating "kill the food, kill the culture." The ability to heal ourselves lies within our traditional knowledge and the capacity to restore resources throughout our ancestral lands. Restoration and access to cultural information and food sources is our primary path to wellbeing. Throughout this report CIMCC relies on the strengths of community culture bearers in addressing challenges as nutritional health is a pressing danger to our current and future generations.

History

The loss of access to cultural resources and traditional foods among the Pomo tribal communities is the direct result of federal and state policies designed to break up Indian families and disenfranchise Native people from their lands and cultural communities. In the first year of California statehood, legislation was passed which allowed U.S. citizens to purchase lands including those lands that were part of traditional Indian territory. In 1851, Federal government agents entered into 18 treaties with some California tribes which set aside 7.5 million acres of land for Indian use and occupancy. Although the tribal leaders signed the treaties and began to move their people on to these lands, the treaties were never ratified by the United States Senate. The treaties were judicially ordered to be sealed for 50 years. Tribal members who were moving to the new treaty lands found themselves pawns in a major land theft and were left landless. This caused many existing Indian tribes to disperse along family groupings to any unoccupied lands that they could find. By 1905, the federal government became aware

of the landless status of California tribes, caused by state and federal policies, it began to set aside, purchase and put into trust the parcels of land that California Indians were inhabiting. Although the California Rancheria Act funded the purchase of these parcels for landless California Indians, it also instituted the further splitting up of tribal communities and had a devastating impact on tribal cultural practices, including traditional diets. This is one illustration of a long history of institutional efforts to colonize California Indian culture and identity. Centuries of these violent efforts have slowly eroded the foundations of tribal traditions and access to cultural resources. California tribes today find themselves embroiled in multi-generational cycles of historical trauma and its outcomes range from drug and alcohol abuse, social isolation, family violence, negative economic opportunity and chronic disease. These conditions critically separate California Indian people from their tribal traditions and cultural identities. In this context, Pomo tribal communities today face a crisis when it comes to health and the issue of maintaining and revitalizing tribal cultural and nutritional practices.



History drives our traditional gathering and revitalization strategies. Our communities succumbed to disease, starvation, murder, displacement and other atrocities at a mass scale during the colonization of California. In 1769, a conservative estimated 310,000 Natives inhabited in California prior to the introduction of the Spanish Mission System. By 1900, it was estimated that there were as few as 20,000 Native people left in California. The change in our diets brought about by foreign agricultural practices, gold mining, de-forestation, urbanization and other conditions figured greatly in the diminishment of our people during this time period. Our dietary challenges of today are associated with the health disparities in our communities. We seek to restore our diets and with them the health and wellness of our communities. Our traditional diets were founded on the rich and diverse life within our places, and our tending of our homelands to sustain life. We are driven

to protect our communities' places. Our once sustainable relationships to our lands and waterways have been disrupted. Then some of our communities lost their lands again during the Termination Era of the 1950's and 60's. Our ancestral lands and waterways hold the fruits of our diets. We seek to restore our access to them through creative stewardships with others to help put our homelands back into balance with our knowledge.

Importance of Increasing Access to Traditional Foods and Cultural Resources

Diabetes is epidemic among American Indians and Alaska Natives (Native people) and causes other health conditions that result in disability and death. Moreover, it is an increasingly global health problem. According to the World Health Organization, there were 422 million people with diabetes worldwide in 2014 and the global prevalence of diabetes among adults over 18 years of age rose from 4.7% in 1980 to 8.5% in 2014. In the United States, Native adults experience a 15.9% prevalence rate of diabetes compared to 11.7% of all adults; the rates vary widely by tribal and urban Indian communities

(Center for Disease Control and Prevention, 2014). In California, which has the largest population of Native people in the nation, 13% of Natives reported being diagnosed with diabetes and 11% reported being pre-diabetic (California Rural Indian Health Board, 2014). The age-adjusted diabetes mortality rate for Native people in California was 33.9 per 100,000 in 2010 and the second highest of all racial groups (Conroy, Pendleton & Bates, 2014). The majority of Native people in California have Type II diabetes. Complications from Type II diabetes include cardiovascular disease; nerve, kidney, eye and foot damage; skin conditions; hearing impairment and Alzheimer’s disease. Native people also experience disparities in some of these health conditions. For example, Native people in California have the highest prevalence rate of cardiovascular disease (44.2%) of all races. Concurrently, many Native people are challenged to maintain healthy weight, nutrition, eating habits and physical activity. Native adults in California have the highest obesity prevalence rate (38.7%) of all racial groups (Conroy, Darsie, Ilango, and Bates, 2016).

Diabetes can be prevented and controlled through healthy eating and exercise. Historically, California Indians didn’t have diabetes. We had a varied diet and engaged in much physical activity to sustain our food resources in a reciprocal relationship with our homelands. Acorns were central in our diets and eaten every day. Historically, an estimated 75% or more of California Indian communities ate acorns as a primary food source and acorns comprised an estimated 50% of our diets (Kroeber, 1925; Conti, 2006). Much of our food activities revolved around the very physically demanding practices of cultivating, gathering and processing acorns from California native oaks. Today, the majority of Native people in California eat acorns only on special occasions if at all. Research proposes that the high- fiber, low calorie diets of traditional Native cultures greatly slowed sugar absorption into the blood stream, thereby protecting us from developing diabetes (Reinhardt et al., 2012). Native people have high rates of diabetes today because of drastic changes in our diets caused by colonization and the imposition of foreign diets and commodity foods on our tribal communities, income, access to healthy and traditional foods and other factors.

Sovereignty is generally defined as the right to enforce laws over one’s people and territory. Food sovereignty is often defined as the “right of peoples to healthy and culturally appropriate food produced through ecologically sound and sustainable methods, and their right to define their own food and agriculture systems” (Declaration of Nyéléni, the first global forum on food sovereignty). When it comes to both sovereignty and food sovereignty our community is currently experiencing a deficit.

We lack a majority of control over our ancestral territories where our traditional foods can be cultivated and harvested to nourish our people. Diabetes and other nutrition related diseases are contributing to a diminished quality of life and higher mortality rates. CIMCC’s seeks to identify gaps in our ability to access traditional foods and create strategies to address these issues. Our goal is to enable a path to revitalizing food harvesting practices and health for tribal communities throughout Mendocino, Sonoma and Lake Counties.



There are many actions that can be taken to increase traditional food consumption, the transmission of cultural knowledge and access to cultural resources are critical to revitalization practices and health and wellness.

Actions at a Glance

1	Increase knowledge on traditional foods	<ul style="list-style-type: none"> • Cooking classes to educate and teach the community about traditional foods in their traditional homelands. Pomo and Miwok tribes encompass Sonoma, Mendocino, and Lake County. • Increasing knowledge about traditional foods available in the community. • Increase knowledge of gathering, harvesting and processing. • Educating tribal community members on the health benefits of traditional foods. • Create Traditional Food Nutrition Curricula • Create Mukurtu Database: Pomo Traditional Food Index
2	Increase access to traditional homelands	<ul style="list-style-type: none"> • Agreements with landowners so that community members can steward and harvest traditional foods and resources (encompassing traditional foods and medicines) • Increasing sustainable community gardens in order to increase community member access to traditional foods. • Ensuring that low income community members have access to acquiring traditional foods for consumption. • Create a declaration of support with community gardens, tribes, and the community • Increase Native Stewardship and Land Management Practices
3	Protecting natural resources and their accessibility	<ul style="list-style-type: none"> • Create gardens that will thrive despite climate change. • Factor climate change into community garden plans. • Promote wildlife friendly practices and policies. Ex: Do not spray pesticides in gardens. • Support the cultivation and preservation of plants that are Native to the region.
4	Increasing access to traditional ecological knowledge	<ul style="list-style-type: none"> • Outdoor education walks to increase tribal community member knowledge on plant identification and traditional stewardship of natural resources.

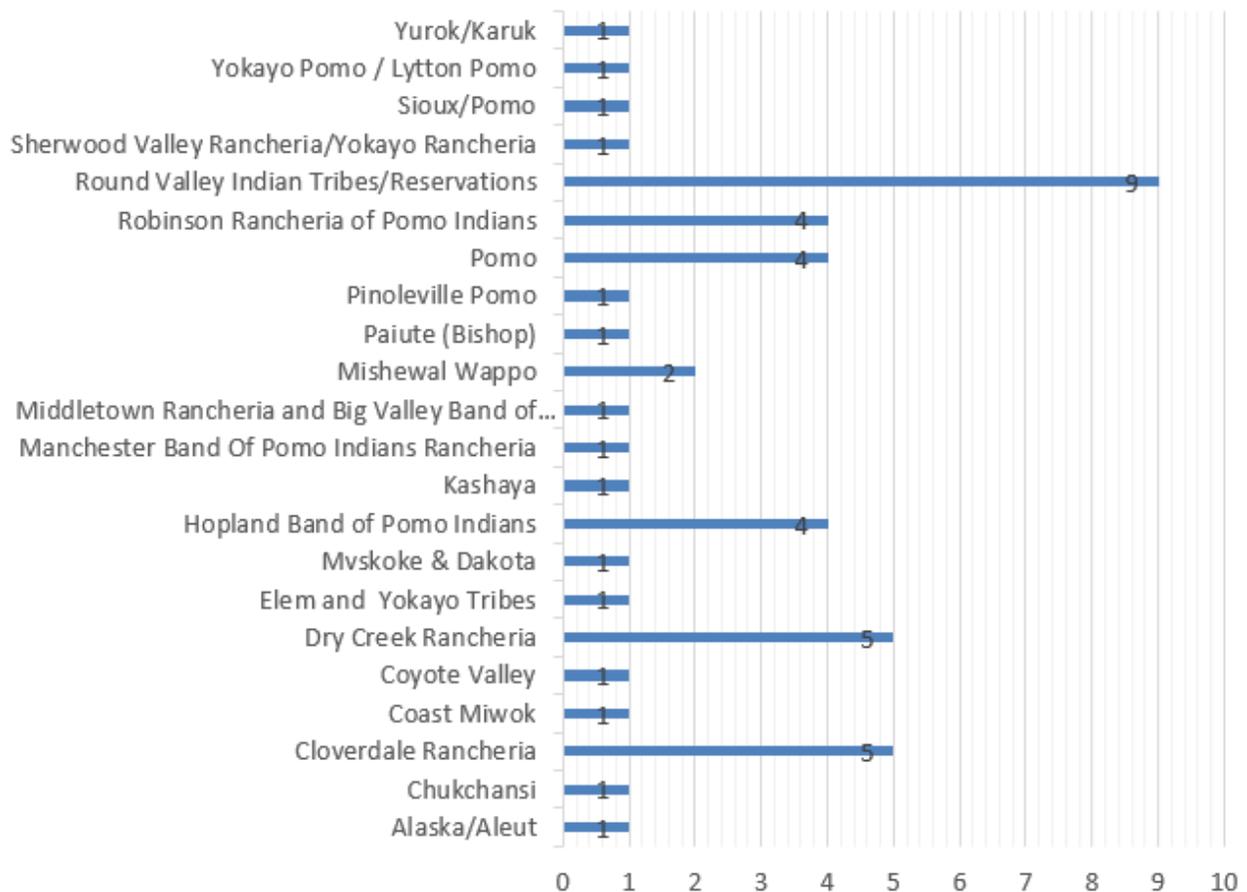
5	Addressing inequity	<ul style="list-style-type: none"> • Addressing underlying causes of hunger and food security • Incorporate health impact assessments
6	Advocate for healthier food options	<ul style="list-style-type: none"> • Increase for the demand for healthy food options. • Advertise locally grown and created foods. • Promote the local food movement. • Nutritious, Delicious and Indigenous: Healthy Native Foods Marketing Campaign
7	Addressing Climate Change	<ul style="list-style-type: none"> • Advocacy for endangered food • Track changes to gathering and harvesting calendar • Community Climate Change Education • Establish Community Climate Change Response Strategies • Mitigate Wildfire Impacts on Indigenous Food Resources
8	Increase access to Traditional and Native American Food products	<ul style="list-style-type: none"> • Increase Availability of Indigenous Food Products • Host Pre Colonial Food Events • Native American Food Incubator/Hub • Local and State Advocacy for Permitting • Native Chef Recipe Clearing house • Increase Network of Native Chefs and Caterers • Native American Food Box Delivery Program
9	Decrease Barriers to Traditional Food Gathering and Harvesting	<ul style="list-style-type: none"> • Advocacy for Changes to Permit Applications and Practices • Addressing Cultural Competency Issues for Land Owners/Managers • Raising Public Profile and Awareness of Cultural Gatherers • Establish Cultural Rights of Way • Establish Public Awareness and Interaction Protocols • Organizational Permit Holders/Liaisons • Mapping of Pesticide Exposure Risk
10	Address Tribal Community Health Disparities	<ul style="list-style-type: none"> • Community Education about Traditional Food Nutritional Benefits • Diabetes Education • Heart Disease Education • Old Gabriel and Indigenous Longevity
11	Increase Political Prioritization of Community Health and Nutrition	<ul style="list-style-type: none"> • Adopt Health and Wellness Resolutions • Adopt Traditional Food Restoration Policy • Dedicate Tribal Lands for Community Gathering and Gardening

		<ul style="list-style-type: none"> • Coordinate Networks of Tribal Nutrition Programming • Create Economic Opportunities for Traditional Food Practitioners
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Survey Findings

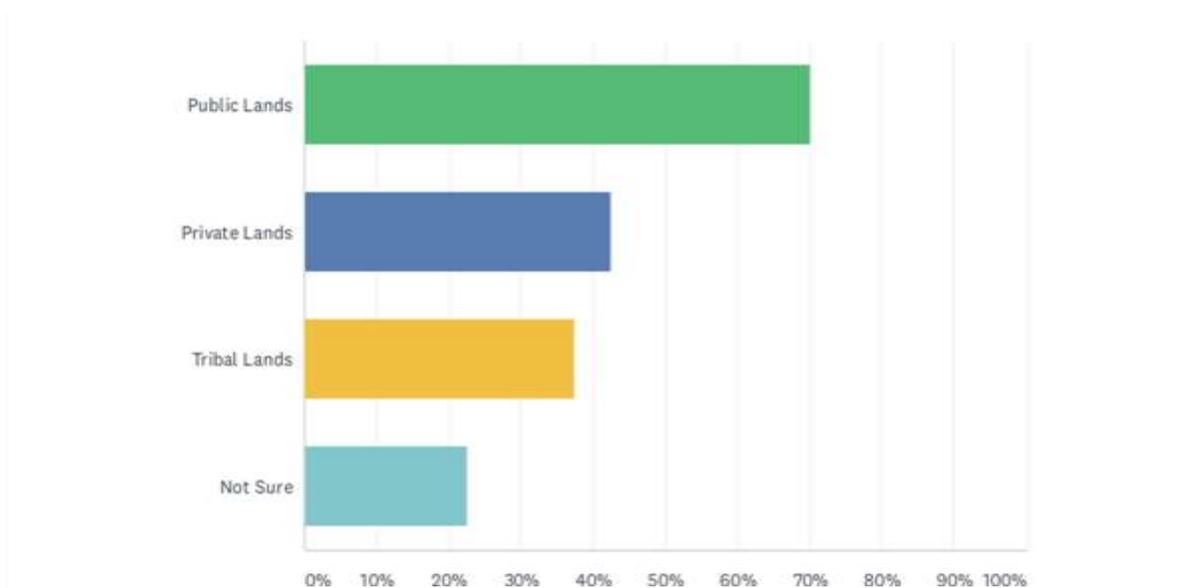
The Tribal Youth Ambassadors (TYA) of the California Indian Museum and Cultural Center (CIMCC) conducted a community survey during 2019 to direct research on the issue and the development of policy options that aim to increase stewardship activities and cultural revitalization efforts by Native American community members. The goal of the project was to determine community based needs for accessing places where traditional foods are located.

Community Member Responses



Round Valley, Dry Creek and Cloverdale Rancheria members provided the majority of the feedback for this project. In addition, 70% of the community members that shared their feedback in this survey identify as female.

Question 11: What types of lands do you currently gather from?



Top selected traditional resources:

- Acorn: 21
- Pepperwood: 11
- Willow: 7
- Angelica: 7
- Seaweed: 7
- Walnut: 5
- Sedge: 5

Community members stated that the factors that enhance their ability to gather and/or steward cultural resources are current tribal stewardship of traditional resources and knowledge on the process. Cultural stewardship education or Traditional Ecological Knowledge (TEK) is key to enhance our community member's ability to steward their homelands. One tribal community member highlights this "I sometimes attend classes or workshops that teach how to identify, gather and store plants."

95% of community members shared that they gather in public lands. 71% shared that they also gather on private and tribal lands.

The challenges community members cited as being major barriers when conducting stewardship or gathering activities on public and private land are: access to traditional resources, permits to gather on the land, and harassment by non-Native community members and state officials.

As one tribal community member notes, "Permitting is lengthy and process doesn't coincide with determining best harvesting times. Public citizens interrupt process and have to educate passersby

constantly.” In addition, tribal community members shared that even on some tribal lands it is difficult to gain access to their traditional resources. Many of our elder tribal community members also mentioned that due to their health they are unable to steward their cultural resources.

8 community members shared the process that they underwent to obtain a permit. The agencies cited by community members include: state parks, California Fish and Game, and the Bureau of Land Management. Community members shared that they needed to provide their tribal identification for the license and there were fees associated with the process for some agencies. The barriers presented by community members included timing and expiration, income eligibility barriers for a fee waiver and application processes.

As one tribal community member shares: “...but I do not qualify for free because my annual income exceeds eligibility even though my income meets the national poverty guidelines.”

Community members shared that the time it takes to obtain a permit ranges from a few minutes, to a day, to over one month. Tribal members shared that the permit process needs to be amended to make it easier for them to obtain the permit. A priority to include tribal perspectives in how the permit process should be managed is key, as was summarized by a community member: “Provide Tribal specific access and allocations based on OUR requirements to maintain our culture.”



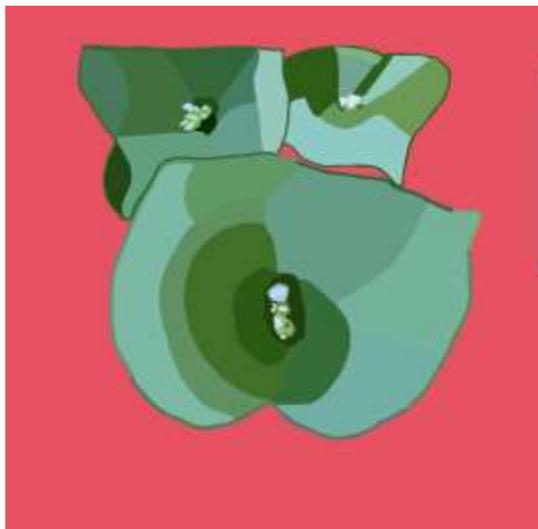
In addition, 25% of community members that responded shared that they were prevented from gathering or stewarding their cultural resources by policies and parks personnel. The list of these cited by community members include: state regulations, county regulations, park rangers and game wardens. Many community members feel uncomfortable or unsafe gathering in a public area as they are afraid of harassment.

As one community member shares: “I think they fear we will destroy the plants, or hurt the environment. When, actually, tending the plants improves their health.”

20% of community members that took the survey also shared that they have received a warning for gathering in public spaces. None shared that they received a fine, but some community members shared that they knew fines to range from \$250-\$1,500.

12% of community members shared that they have written agreements to gather on public lands. Whereas 9% had verbal agreements. 9% had written agreements to gather on tribal lands as well.

Only a handful of tribal community members shared that they were able to get a permit either through: the Bureau of Land Management, an online application for seaweed/fishing, and a gathering permit through a park. A few community members also shared that they had agreements with landowners to gather on their property. However, these agreements were very few in the broader scope of harvesting and gathering experiences.



Tribal community members shared that communication amongst parks and tribes is vital in order for their land management practices to support traditional food and cultural resource gathering and stewardship. As one tribal community member summarized “Work closely with the local Tribes to incorporate appropriate land management practices.”

85% of community members that shared their feedback cited tremendous concerns regarding pesticides and pollutants being sprayed around their gathering sites.

17% of community members knew about informational or other resources to determine if/when pesticides have been used in or near your traditional gathering areas, the resources include: tribal environmental departments, the county, and other community members.



Legal and Policy Background: Tribal Land Stewardship in California

The Tribal Right to Hunt, Fish, and Gather Off-Reservation in California

In California, a number of “legal” appropriations of land -- resulting from unratified treaties and termination policies -- have resulted in California Tribes owning and controlling very small land bases. Many gathering sites where Tribes hunted, fished, and gathered are now bounded within private properties and public lands, including national and state parks and United States Forest Service lands. Treaty tribes generally have reserved gathering rights on off-reservation lands, which the Supreme Court has recognized and enforced as “easements” across ceded territory -- superior to all property rights because they are the oldest in the land.¹

Unfortunately, the 18 treaties that were negotiated between the state and some California Tribes between 1851 and 1852 were never ratified -- rejected by the U.S. Senate in a secret session. Many California Tribes were never even involved in any treaty negotiations with the state. Moreover, a decade later in 1861, California Congress enacted laws extinguishing Indian title to all lands in California -- commencing a period of “landlessness” for Tribes in the state. In 1887, U.S. Congress passed the General Allotment (Dawes) Act, authorizing the president to survey and divide tribal lands into allotments for individual Indians and families. However, the problems that the Tribes in this region contend with are associated more with the total loss of land.

In 1906, the state of California initiated a land acquisition program that reserved appropriations almost yearly to acquire small tracts of lands for California Indians -- resulting in the establishment of 82 small reservations throughout the duration of the program. The total lands acquired were a very small fraction of the lands that had been originally promised to California tribes through their unratified treaties. But even these small gains would once again be voided by federal termination policies that were adopted by the state from the 1950s to the 1960s. Under this policy, more than 100 Tribes were terminated in California -- their lands and reservations confiscated, their governmental powers removed, and their federal trust relationship with the federal government nullified.

Throughout the period between the late 1970s to the late 2000, many, but not all, terminated Tribes were able to sue the federal government to reclaim their recognition status. However, not all of the Tribes that restored their recognition status were able to reclaim the land that was taken from them during the termination era, leaving some Tribes, like the Cloverdale Rancheria of Pomo Indians, landless (having no lands in federal trust). Meanwhile, some California Tribes -- like Round Valley -- still reside on reservations that were created through executive order and authorized by the U.S. Congress (throughout the latter half of the 1800s). Though they are not treaty-based Tribes, they hold the same legal status as treaty Tribes.

¹ Wood, M.C. (2007). EPA's Protection of Tribal Harvests: Braiding the Agency's Mission. *Ecological Law Quarterly* 43(1), 175-200.

Due to this complicated history, most California Tribes do not have the same federally enforceable rights to hunt, fish, and gather on off-reservation lands as the treaty Tribes in other areas of the U.S. (additionally the fact that California tribal treaties were not ratified also signifies that Tribes technically never ceded their lands). Consequently, California Tribes have been forced to advocate for their gathering rights without the support of the federal government -- who, through the trust doctrine, has a responsibility to respect Tribal self-governance (sovereignty) and the well-being of treaty Tribes.



The diverse circumstances of California Tribes -- varying with recognition and landholding status, the location of their reservations, the myriad development interests in their off-reservation ancestral territories, and the size and capacity of their Tribal governments -- have led to differences in the capacities of individual Tribes to assert their sovereignty in matters of natural resource management with state and municipal government agencies.

Some California Tribes have been able to use 638 contracting -- a process established under the 1975 Indian Self-Determination and Education Assistance Act -- and 638 compacting -- sanctioned by 1994 amendments to the 1975 Act -- to expand their stewardship authority on forest lands. Through the "stewardship authority" clause in the Forestry Title of the Farm Bill, the federal government is authorized to enter into forestry contracts with federally-recognized Tribes, which allows some Tribes to expand their management of forest lands adjacent to their Tribal lands (an authority established in 2014 and renewed in 2018). However, this option is generally not accessible to non-treaty Tribes in California and is also difficult to successfully navigate due to the onerous, bureaucratic application process. Other California Tribes -- particularly those who lack recognition status -- have relied more on diplomacy to develop relationships and informal arrangements that enable them to practice traditional gathering on public lands to a certain degree.

Even though California's Tribal treaties were never ratified, the fact remains that the California Tribes who underwent the process of negotiating treaties have verifiable historical documents that memorialize their rights. Tribes assert -- and courts have affirmed -- that rights to hunt, fish, gather, and burn that are not specifically ceded by Tribes (or terminated by the U.S. Congress) are retained by Tribes. The failure of the federal government to ratify the treaties is neither the same as California Tribes ceding their rights nor an act of Congress terminating them. However, the lack of public awareness about these court enshrined rights is an abstract matter to most staff at natural resource agencies who -- like most members of the general public -- are unaware of the history of and federal and state policies and jurisprudence around Tribal gathering rights.

Tribal Consultation and Natural Resource Management in California

Beginning in the 1970s, the federal government passed legislation that sought to return self-governance to Tribes. The 1970s saw the rise of the self-determination era, initiated through the Indian Self-Determination and Education Assistance Act of 1975. In the 1990s, the federal government renewed formal government-to-government relations with treaty Tribes through a series of Clinton-era executive orders.



However, most of the policy developments supporting more substantive engagement between California Tribes and the state of California did not come to fruition until the start of the new millennium. In the 2000s, California began developing policies and legislation to support (at least at face) tribal consultation between California Tribes and the state and to empower Tribes with more decision-making agency over land use natural resource management. Most prominent among the laws passed were CA Senate Bill 18 (2004) and CA Assembly Bill 52 (2014). SB18 mandates that cities and counties consult with tribes before amending their general plans and allows recognized tribes in California to hold conservation easements. AB52 (a guideline update for tribal cultural resources in the California Environmental Quality Act (CEQA)) requires entities developing projects that would disturb culturally and archaeologically significant sites to notify and consult with tribes and to develop appropriate corrective measures to mitigate potential disturbances. The substantive impact of these laws on the agency and the participation of tribes in these land use projects varies. Some tribes believe that the process is more a formality observed by public agencies and private developers than it is a meaningful opportunity for tribes to impact the outcomes around land use projects.

Throughout this period, there were also other highly significant, overlooked developments in several departments within the state Natural Resource Agency that increased Tribal influence in natural resource management.

In 2010, the California Environmental Protection Agency (CalEPA) established the Tribal Advisory Committee as part of a settlement for a 2006 lawsuit initiated by the Fort Mojave Indian Tribe against PG&E and the Department of Toxic Substances Control of CalEPA. The Tribe sued the Department of Toxic Substances Control of CalEPA for violating state environmental laws by not exploring alternatives to building a \$15-million 7,000-square-foot water treatment plant in an area of the Mojave Desert (Topock Maze) that had cultural significance to them.² CalEPA TAC convenes Tribal representatives and CalEPA executive staff to discuss environmental issues and projects involving California Tribes.

² Lifsher, M. (2006, November 10). Historic apology over sacred site. *The Los Angeles Times*. Retrieved from <https://latimes.com>.



Committee membership includes representatives from federally-recognized and non-federally recognized California Native American Tribes -- usually the Environmental program directors and managers for Tribes. TAC representatives meet with the Secretary of CalEPA and/or his designee, the directors of each CalEPA Board, Department and Office (BDOs), or their designees, the BDO Tribal Liaisons at meetings that are held at least quarterly each calendar year. CalEPA has recently begun the process of developing a tracking mechanism for consultation within all of their BDOs.³

In the same year, through the concerted advocacy efforts of a coalition of Northern California Tribes, the California Fish and Game Commission adopted a regulatory amendment to exempt Tribal gathering from California's adoption of the federal Marine Life Protection Act (MLPA), which was first passed by the state in 1999. The MPLA meant to

establish an improved network of marine protected areas (MPAs) where harvesting and gathering of marine species would be regulated, and sometimes prohibited, to foster the long-term sustainability of ocean ecosystems. However, the state did not consider how this legislation would impact the subsistence and cultural needs of Tribes relying on their ability to gather in these areas. The exemption permits Tribal gathering in some, though not all, MPAs.

The highly publicized outcry and organized opposition from Tribal communities in response to the state's disastrous planning for the MPAs forced the state administration to rethink how it involved Tribes in natural resource management regulation and policy development. As a result, Governor Brown enacted Executive Order B-10-11 in 2011. The order established the position of Tribal Advisor in the Governor's Office and ordered the Tribal Advisor to implement consultation between the state administration and tribes on policies that affect California tribal communities. The order required every state agency under the control of the Executive to "encourage communication and consultation." In 2012, California's Natural Resources Agency adopted a "Formal Consultation Policy," in furtherance of EO B-10-11 to "to ensure effective government-to-government consultation between the Natural Resources Agency, the departments of the Natural Resources Agency, and Native American tribes and tribal communities."⁴

³ Interview with Sarah Ryan, Environmental Protection Director at the Big Valley Band of Pomo Indians

⁴ Natural Resources Agency Tribal Consultation Policy, Draft Circulated for Public Comment April 2012. California Natural Resources Agency. Retrieved from <http://resources.ca.gov/docs/tribal_policy/Final_Tribal_Policy_Letterhead.pdf.

While these policy developments encourage tribal consultation at the state level, there remains no mandated legal requirement for true consultation on a government-to-government basis between California Tribes and the state that the federal government can enforce. According to some Tribal people, the state has conflated these policies with “consultation” and, in many cases, attempted to substitute “consultation” with the system of agency tribal liaisons and/or “stakeholder notification” processes that these policies have established. Consequently, and ironically, these policies have in some instances weakened the ability of California Tribes to enforce their right to participate in decisions involving natural resource management.

In 2017, the Fish and Game Commission established a Tribal Committee to advise the Commission on matters related to Indian tribes on all matters under the Commission (a legacy of the Northern California Tribes’ efforts to pass tribal exemptions to the MLPA). In the same year, the California Water Resources Board adopted two new categories of tribal beneficial water uses for designation in water quality control plans: (1) Tribal Tradition and Culture (uses of water that support “cultural, spiritual, ceremonial, or traditional rights or lifeways”) and (2) Tribal Subsistence Fishing (uses of water involving non-commercial catching or gathering of “natural aquatic resources,” including fish and shellfish, for subsistence purposes).⁵ The policy enables Tribes to create new categories of beneficial uses for inclusion in water quality control plans to protect species that they rely on for subsistence from water pollution.



Despite these recent policy advances, the high level of scrutiny about how public lands are managed in California continues to limit the decision-making influence that Tribes have on natural resource management. Moreover, many states that limit gathering rights claim to do so in service of conservation goals -- including California. Courts have generally affirmed treaty Tribes’ inherent rights to gather, but have also stipulated that states can infringe on this right when there is a “conservation necessity” to preserve endangered species or environments that can be achieved by limiting Tribal gathering rights.⁶ “Conservation necessity” concerns and the public scrutiny over natural resource management in California may contribute to a high level of reluctance by land managers in the state to adopt Tribal land management practices on public lands and to engage directly with Tribal communities

⁵ Beneficial Uses: Tribal Tradition and Culture (CUL), Tribal Subsistence Fishing (T-SUB), Subsistence Fishing (SUB). California Water Boards. Retrieved from <https://www.waterboards.ca.gov/about_us/public_participation/tribal_affairs/beneficial_uses.html>

⁶ Sanders, M. (2007-2008). Ecosystem Co-Management Agreements: A Study of Nation Building or a Lesson on Erosion of Tribal Sovereignty? *Buffalo Environmental Law Journal* 15(1-2), 97. Retrieved from <<https://digitalcommons.law.buffalo.edu/belj/vol15/iss1/3>>

Goodman, E. (2000). Protecting habitat for off-reservation tribal hunting and fishing rights: Tribal comanagement as a reserved right. *Environmental Law*. 30.

on issues of natural resource management than in other states. To some extent, this is beginning to change in certain areas of Northern California.

Tribal Gathering in California

Apart from the regulatory tribal exemptions to the California Marine Life Protection Act passed in 2010, there are only six other instances in which California state law acknowledges Tribal traditional gathering. All instances are in the California Fish and Game Code and speak specifically, and individually, to the fishing rights of the Karuk, Yurok, Maidu, Hupa, and the Pit River Tribes.⁷

In 2006, Region 5 of the U.S. Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) -- which includes California -- established a Traditional Gathering Policy that enables Tribal communities (regardless of recognition status) to gather on BLM and USFS lands sans permits. The policy itself leaves leeway for implementation to be guided by local agency units in consultation with the affiliated Tribes in the area.⁸ Notably, the policy is more inclusive of Tribal communities in California than the national USFS Traditional Gathering Policy that was established a few years later in the 2008 Farm Bill, which only permits federally-recognized Tribes to gather on USFS lands.⁹

Tribal communities can also apply for permits from state agencies to access certain areas of public land for the purposes of traditional gathering.

The California Fish and Game Commission does not currently have a designated permit process specifically for Tribes. Rather, Tribal people apply for the same collection permit that is available to the general public, with a couple differences: Tribal applicants do not need to pay for the permit (with proof of low-income status -- which requires an additional form) and need to confirm Tribal enrollment through a Tribal ID card.¹⁰

⁷ Berkley, C.G. and Williams, S.W. (2019). California Indian Tribes and the Marine Life Protection Act: The Seeds of a Partnership to Preserve Natural Resources. *American Indian Law Review* 41(2), 307. Retrieved from <<https://digitalcommons.law.ou.edu/air/vol43/iss2/2>>

⁸ Forest Service Manual Supplement #1560, Region 5; Bureau of Land Management Instruction Memo No. CA-2007-017

⁹ H.R.2419. Food, Conservation, and Energy Act of 2008. 110th Congress (2007-2008). <<https://www.congress.gov/bill/110th-congress/house-bill/2419/text>>

¹⁰ Interviews with Tribal staff, traditional gatherers, and Native American attorney



The California Department of Parks and Recreation has had a Tribal gathering permit policy -- the Native California Indian Gathering Permits (DPR 864) since 1985. In 1982, Paul Nesbitt, then State Parks Historian, drafted the first version of the policy after meeting with Willie Pink, the second director of the Native American Heritage Commission (NAHC). During the meeting, Pink explained to Nesbitt that the most helpful thing State Parks could do for California Tribes was to help them secure materials on park lands for basket weaving. The art form was beginning to die out in the California Native community, not for lack of interest, but due to the extreme difficulties accessing weaving materials. Some Native people were previously able to secure materials on private lands through the relationships they had with local ranchers. But as the ranchers retired and passed their land on to absentee children, the latter generation, who became

concerned with legal liability issues, began employing measures to prevent anyone from entering their lands. Nesbitt drafted the first version of the policy soon after the meeting in 1982, but it did not become official Department policy until it was approved by State Parks Director Bill Briner in 1985. However, most field officers did not disseminate the permits or make information about the policy widely available to Native communities.

There were no additional directives issued to the park districts by the Department's headquarters to provide guidance about policy administration on the ground, though this changed with subsequent policy revisions in later years. The policy underwent two revisions, with the first revision resulting in permit application review and approval being delegated to Environmental Scientists in the Natural Resources Division and District Superintendents, and the latter revision returning some oversight to the Cultural Resources Division.¹¹ The first policy revision, which took place in the mid-1990s, appears to have been a reaction by the Natural Resources Division to the risks that they believed the policy would pose to their conservation management objectives. The Division feared that the policy had the potential to open the park lands up to the same abuses from the general public seen on public lands in Mendocino and Sonoma Counties during mushroom harvesting season in the wintertime.¹² The policy is currently overseen by the Tribal Affairs Program in the department's Cultural Resources Division.

The permit appears to be a version of the scientific research and collecting permits available to the general public that has been slightly modified for Tribal gathering purposes. It enables anyone who identifies as a "Native California Indian" to gather in the State Parks; there is no requirement for applicants to be formally affiliated with a Tribe, according to the language on the permit. The application

¹¹ Interview with Edward "Breck" Parkman, former Bay Area District Archeologist for the California State Parks, and John Foster, former Senior Archeologist for the California State Parks.

¹² Interview with John Foster (California State Parks).

process requires applicants to provide the time, location, plant specie(s) they intend to gather. The permit also allows the main applicant to list any other individuals that they would like to be covered under the permit (family members, etc.). The renewal period for the permit varies by park district between one to five years (according to different Tribal members who have obtained gathering permits from the department in the past). The staff who are charged with issuing permits in their park district (21 total in the California State Parks system) have wide discretion as to how they implement the permit system.

However, the Department is in the early stages of revising its Tribal traditional gathering policy. The Department's Natural Resources and Cultural Resources divisions are currently reviewing the policy language as they prepare to revise the policy to be more beneficial to both State Parks and Tribal communities. The Department is in the process of developing an outreach plan to ensure that California's Tribal communities are consulted in the policy revision.

The California Department of Transportation (CalTrans) developed a "Plant Gathering Permit" policy as early as 2013 that allows the "gathering of roadside vegetation/plant-life for the purposes of research and education or by Native American-Indians for religious and cultural purposes is allowed with a permit." However, "only roadside vegetation/plant-life that is not within an area that Caltrans has identified as environmentally sensitive and that has not been identified as environmentally protected" can be gathered. The permit covers a maximum of 20 people at one time, and if more than five people will be gathering, a supervisor must be appointed to oversee the gathering activity. All participants are required to wear safety equipment (hard hats, approved vests, gloves, and glasses/goggles that participants can loan from CalTrans). However, the permit is neither specifically designated for Native people nor does it speak to gathering by Native people for subsistence purposes.

Tribal communities have been working informally with CalTrans since the mid-1980s to access sites within CalTrans right-of-ways for gathering purposes, but the official Plant Gathering Permit process was formally established in the 2010s. Prior to the policy, the only alternative that Tribal people had to access and manage plant resources on the right of ways was to apply for encroachment permits - which allow applicants to conduct activity "within, under, or over the State highway right-of-way." The agency's 2007 Encroachment Permit Manual specified that permits could be obtained for the "gathering of roadside vegetation/plant life for the purposes of research and education or by Native American Indians for religious and cultural purposes". However, the Plant Gathering Permit was established partially in response to Tribal communities advocating for a separate system that would offer them more privacy than the encroachment permit process. Tribal communities feared that the encroachment permit process risked exposing their gathering sites to CalTrans staff and other Tribal people. The 2013 Encroachment Permit Manual revision included specific information about obtaining a "Plant Gathering Permit."

CalTrans District 1 -- which covers Del Norte, Humboldt, Mendocino and Lake Counties -- seems to have a lot of experience working with Tribes to facilitate plant gathering on right-of-ways. District 1 appears to have a district-specific permit process for traditional plant gathering: applicants need to disclose their intended activities, how many people will be gathering plants, the location(s), the specie(s) that will be gathered, in what way plants will be gathered (taking cuttings or removing the plants), and

where they plan to park for the gathering. District 1 has also developed a "Guide to Protecting, Using and Managing Native Plants Within the Caltrans Right of Way."¹³

At face, the gathering policies and systems that have been adopted by the USFS seem to be more lenient than those of the National Park System (NPS) and California State Parks. This is likely due to the fact that the land management practices of these agencies are governed by different missions -- "preservation" versus "commerce." The NPS and California State Parks manage park lands with the aim of preserving natural and cultural resources while the USFS manages forests for timber and non-timber forest



products (NTFP) -- though there has been an increasing focus in some regions on managing forests for overall ecosystem health in recent years. Tribal traditional gathering has been thought to be incompatible with the "preservation" mission of the state and national parks -- due to a lack of understanding about the sustainability principles inherent in TEK or traditional gathering and stewardship practices -- while the USFS's historically "commerce" driven land management mission has perhaps made it relatively easier for Tribes to advocate for and secure more liberal gathering policies and processes on Forest Service lands over the years.

Objectives

Based on the results of the community survey, research, and interviews with individuals who have worked on or around the issue of Tribal stewardship on public lands and traditional gathering rights, the following priorities have been identified. Strategies chosen would need to:

- Recognize and not compromise the inherent sovereignty status of California Tribes**
- Survive beyond specific relationships between Tribal staff and staff at park sites and agencies**
- Not exacerbate the already overstretched capacities of Tribal staff**
- Decriminalize access for all Tribal members, including those who may be "unaffiliated" with a Tribe (disenrolled, a member of a non-recognized Tribe, do not want to affiliate with their Tribe for political or other reasons, etc.)**
- Respect and accommodate the differences in the ways that Tribes and family/community groups within Tribes gather**

Additionally, the strategies would need to address several points of tension:

¹³ Interview and e-mails with staff from the CalTrans Cultural Studies Office and Division of Transportation Planning: Jodi Brown, Sarah Allred, Lonora Graves, and Tina Biorn.

- ❑ **Policy versus Application of Policy**: There seems to be situational enforcement of gathering policies. In practice, natural resource codes, regulations, and policies can be interpreted differently by park staff depending on a number of factors -- including the political standing of a Tribe in the larger community, park management priorities, and even the personalities of rangers and supervisors. This can be either advantageous or disadvantageous for Tribes depending on which way a park is inclined to interpret code -- allowing or disallowing Tribal gathering because of or despite official policies and regulations. Strategies should enable Tribal individuals to access their gathering rights more consistently across gathering sites.
- ❑ **Structure versus Flexibility**: The variation in how policies are enforced can also be attributed to and impacted by the nature of the mechanisms that enable Tribes to gather in parks -- e.g. relationship-based access (less structure) versus institutionalized rights and codified procedures (more structure). Strategies should be flexible enough to facilitate meaningful dialogue and action with municipal and/or state public lands agencies, but include enough “structure” to offer guidance and accountability in situations where there is conflict about the interpretation or implementation of Tribal gathering rights.
- ❑ **Privacy versus Transparency**: Discretion is necessary to protect gathering sites from overharvesting by other harvesting groups -- like commercial harvesters -- and from general environmental destruction. At the same time, the state and/or a municipal government may not be able to effectively support Tribes’ efforts to protect these resources and their access rights to them without at least a minimal amount of knowledge about what these things are and therefore what measures are needed to support Tribes in managing them.
- ❑ **Tribal versus Non-Tribal “Gathering” Rights**: The systems developed to manage natural resource harvest (in California and in general) have resulted in a regulatory paradox for “traditional gathering” -- it is both underprivileged and overregulated. Traditional gathering -- with some exceptions -- is generally interpreted as “recreational foraging” in codes and regulations that set limits for harvesting on public lands and do not recognize that stewardship is incorporated in traditional gathering. Many recreational foragers gather without attending to the plants or landscapes they are gathering from. At the same time, the permit processes that have or are being developed to regulate the traditional gathering place, have higher scrutiny on Tribal people than members of the general public -- who are in some instances allowed to gather up to a daily weight limit of specific resources sans permits (E.g. nuts and berries on some NPS lands). It is sometimes easier for Tribal people to utilize the processes available for the general public to gather. Yet, Tribal gathering is also comparatively underprivileged, given that there are a growing number of laws in cities -- like Seattle and Portland -- and even at the federal level (e.g. The Special Forest Products Program Reauthorization Act of 2019) -- that are effectively expanding public and commercial gathering rights by encouraging urban foraging for the general public or loosening restrictions for commercial harvesters on public lands.¹⁴

¹⁴ H.R.4357. Special Forest Products Program Reauthorization Act of 2019. 116th Congress (2019-2020). <<https://www.congress.gov/bill/116th-congress/house-bill/4357?r=1&s=1>>.



Overview of Strategies

In the past, some of the strategies that Tribal communities in California have used to increase access rights to traditional foods and medicines on both public and private lands have included:

- ★ Tribes or tribal consortiums working with land trusts to buy back and repatriate private land -- that are significant in their own right or adjacent to significant lands
- ★ Tribes working with land trusts and conservancies to develop conservation easements on private and public lands
- ★ Tribal individuals developing relationships and informal access agreements with managing staff at specific parks and/or, in the case of private lands, with landowners
- ★ Tribes developing formal co-management agreements/memorandums of understanding (MOUs) with specific natural resource agencies
- ★ Tribes “buying out” the gathering rights of commercial harvesters in order to secure resources for their Tribal gatherers (e.g. buying up kelp and seaweed commercial permits)

The strategies included below aim to expand on the strategies listed above, with particular focus on enforcing and expanding Tribal traditional gathering rights on municipal and state parks. The following systems of practice, policies, and other strategies have been summarized or suggested based on a literature review of policy research and semi-structured interviews with 35 individuals -- including (A) Tribal staff in California (from federally-recognized and non-recognized Tribes), (B) individuals and/or groups who have worked with Tribes, and (C) staff at public agencies in the state.

IMMEDIATE-TERM

- A. Develop and/or Amend Permit Policies and Procedures
 - a. Municipal Gathering Permits
 - b. Standardize Permit Procedures
 - c. Amend Permit Terms and Procedures
 - d. Substitute Tribal IDs for Gathering Permits
 - e. Evaluate the Impact of Permits on “Conservation Necessity” Goals

- B. Designate Tribal Cultural Centers as Gathering Hubs and “Referral Agents”
- C. Co-management Agreements/Memorandums of Understanding (MOUs)
- D. Park General and Management Plans: Pursuing the “Right to Habitat Protection”
- E. Sustainability and Climate Action Plans
- F. Native Representation at State and Municipal Parks
- G. Reform Hiring Policies at State and Municipal Parks
- H. Tribal Gathering Clearinghouse: Tested Systems of Practices and Boilerplate Language
- I. Other Strategies

LONG-VIEW: Changing Decision-Making Structures

- J. Cultivate Relationships
- K. Alliances With Non-Tribal Stakeholders
- L. Set the Stage for Strategic and Equitable Engagement: InterTribal Consortiums
- M. California Codes: Parks and Recreation & Fish and Game
- N. Statewide Tribal Gathering Permit Regulation
- O. Cultural Preserves and Cultural Easements
- P. Deconstruct Western Natural Resource Management Paradigms

IMMEDIATE-TERM

Develop and/or Amend Permit Policies and Procedures

Municipal Gathering Permits

Though permitting processes exist at the state level, some Tribal individuals (particularly those from non-recognized Tribes in more urban areas) expressed interest in developing more local level permitting processes for traditional gathering at municipal parks.

The Chochenyo and Karkin Ohlone Tribes are working through their land trust -- the Sogorea Te' Land Trust -- with the City of Oakland's Parks and Recreation Advisory Commission (PRAC) to develop policies that will support traditional harvesting activities in City parks. PRAC is a group composed of citizens that advise the Mayor, Council, City Administrator, and the Oakland Parks and Recreation Department on all matters relating to the general policy and operation of the parks and recreation system. The Tribes are interested in developing a gathering permit process, which would be supported by efforts to educate park rangers on traditional gathering and Native plant restoration at some of the parks.

Oregon Metro, the regional government for the Oregon portion of the Portland metropolitan area, manages 17,000 acres of regional public parks and natural areas. Oregon Metro recently established a Cultural Resource Use Permit Policy -- a “culturally appropriate process for Native Americans to access land for cultural events, culturally significant plant material harvesting or ceremony space.” The agency has an intertribal cultural resource specialist position on staff that will work directly

with each applicant to coordinate their resource use requests. The policy specifies procedures for application review, and indicates that there is no fee for the permit.¹⁵

Standardize Permit Procedures

Where there are existing Tribal gathering permit policies, Tribes should insist on clearly outlined procedures to ensure that they are being enforced.

Tribal members are not always able to obtain gathering permits, even with a formal permit



process or policy in place. State Parks staff have noted that the tribal gathering permits are not widely used. Policies are typically developed at an agency's executive level, with the expectation that field offices will work with local Tribes to develop procedures to implement them according to local conditions -- which is not always the case. Some Tribal people who attempt to comply with the policy remain unable to obtain permits, because agency staff are unresponsive to their outreach efforts.

Tribes will likely need to push for their local parks to establish standard permitting procedures that remove the ambiguities and inconsistencies in the current permitting process. The procedures should include an overview of the process, timeline, designated contact person(s), communication protocols, criteria explaining when and why permits are rejected, and a process for appealing rejected permit applications. Moreover, Tribes should consider pushing for mandated training for all park staff to ensure that all staff are aware of the policy and understand the procedures for how to implement them. This training could be integrated into the agency's standard employee orientation, park manuals, and employee handbooks. Tribes might consider developing these procedures themselves to propose for consideration by the parks.

Tribes might also consider advocating that parks hold quarterly or biannual meetings with their local Tribes to discuss the status of the policy, to communicate concerns and issues with its implementation in the parks, and to offer suggestions for improvements. As a practice, this mode of engagement between Tribes and parks has precedence. During the 1980s, the Redwood National Park established regular communication with various Tribes who had traditional lands within the park's boundaries through quarterly meetings. During these meetings, the park's cultural resource manager convened other senior park staff to meet with Tribes, hear their concerns, and address their issues. This

¹⁵ "Intertribal cultural resources". Oregon Metro. <https://www.oregonmetro.gov/intertribal-cultural-resources>

protocol seems to have been an effective way for Tribes to communicate their concerns about the stewardship of natural and cultural resources in the park.¹⁶

Amend Permit Terms and Procedures

While several permit processes exist at the state agency level, the criteria in the applications appear to vary widely. Traditional gatherers have expressed that the criteria for permits needs to be simplified to better accommodate their needs.

- ★ *Details about gathering activity:* Some gatherers feel that the procedure for accessing resources on state parks is too onerous, because it requires a comprehensive inventory of each resource they intend to gather, details about gathering sites, etc.).
- ★ *Renewal period:* Most gatherers want permits to cover a longer period of time -- ranging from five-year to lifetime coverage. Tribal individuals report having obtained State Parks gathering permits with renewal periods varying between one to five years. The Los Padres National Forest, in Los Angeles County, developed a lifetime pass for Tribal members (when Tribal gathering permits were still required on USFS lands).
- ★ *Application review:* The application review period for permits is neither transparent nor convenient for gatherers, given that some of the materials they need to gather are for time-sensitive purposes (e.g. deaths, illnesses). The turnaround time for permit application review and approval needs to be both shortened and more clearly communicated to applicants.
- ★ *Permit and parking fees:* Some gatherers report needing to pay a fee for the permit and/or for parking in order to gather at specific sites. Gatherers have expressed that fees should be waived for Tribal people.

While these were the main criteria that were critiqued by gatherers and Tribal staff, a couple notable points were also raised about who gathering permits should cover that require deeper consideration about the criteria for verifying Tribal affiliation.

A few individuals expressed the desire for permits that offer “blanket coverage” for a Tribe in place of individual gathering permits. However, the concept of “blanket access” needs to be more thoughtfully considered, given that there are already traditional systems of family or village-specific access to certain gathering sites. A permit that establishes “blanket access” for permit holders would legally permit gatherers to harvest at all sites within the jurisdiction of the agency issuing the permit. However, “blanket access” would disregard the long-held system of family or village-specific access and interfere with the cultural and spiritual customs of reciprocity -- which require shared access to specific gathering sites to be negotiated between family groups within and between Tribes.

Beyond “blanket access” gathering permits, the possibility of the “transferability” of permits was also raised. One gatherer in the Los Angeles County area disclosed that members of her Tribe often shared the annual USFS Traditional Gathering Passes that were issued to them. While this “transferability” did not appear to be specifically sanctioned through permit policy, it also did not

¹⁶ Interview with Janet Eidness, Tribal Historic Preservation Officer for Blue Lake Rancheria.

appear to be officially prohibited. Some Tribal members lent their passes as needed to other members who did not own passes, and the forest service staff --- who had cultivated a relationship with the Tribe and were generally aware of the nature of their activities -- seemed to overlook the practice.



Substitute Tribal IDs for Gathering Permits

A majority of gatherers and Tribal staff have proposed swapping the existing state gathering permit process for a policy that mirrors the Region 5 BLM and USFS Traditional Gathering Policy -- which forgoes permits altogether and only requires gatherers to carry some form of Tribal identification while they are gathering. In fact, the Tolowa Dee-Ni' (of the Smith River Rancheria) have considered redesigning their Tribal ID cards to include more comprehensive information in support of efforts to substitute the use of Tribal IDs for any number of cumbersome application processes, such as Tribal gathering permits.

Some Tribes object to being required to provide identification at all, as a political point, because they believe that their inherent Tribal sovereignty rights should prevent people from denying them their right to gather -- with or without Tribal recognition status. However, others concede that having a criteria within a Tribal gathering policy to verify Tribal identity is actually necessary to safeguard the rights of Tribal people against those who would make false Tribal identity claims to access and/or exploit traditional plant foods and medicines. Similarly, some Tribal people object to the existence of a gathering permit system at all. However, gathering permits may be the only reliable means for some Tribal people who are not formally affiliated with a recognized Tribe to gain access to certain parks -- particularly the parks that rigorously observe gathering permit policies.

Evaluate the Impact of Permits on “Conservation Necessity” Goals

Natural resources agencies are mandated to preserve the health of wildlife, waterways, and lands, which in practice involves using the best available science in service of their preservation goals. Programs and policies that limit gathering activities on public lands are generally developed for conservation purposes -- including those that limit traditional gathering practices. However, recent studies on the impact of traditional gathering and overall Traditional Ecological Knowledge (TEK) practices on plant populations indicate that these practices actually support native plant health -- suggesting that policies specifically limiting Tribal traditional gathering may be contrary to “the best available science.”¹⁷



According to one Tribal staff member who regularly submits collection or gathering permit applications on behalf of members of her Tribal community to the Fish and Game Commission and State Parks, gathering permit applications seem to be merely a bureaucratic formality, since they are generally not evaluated by the agency’s natural resource specialists to determine how the gathering of the species listed on permit applications will impact the health of plant populations in the area.

Because taxpayer dollars fund the enforcement of these policies, there should be an evaluation of how well Tribal gathering permit policies serve state conservation goals. Tribes might consider pushing for the state to amend existing Tribal gathering permit policies to require evaluations of their efficacy as a conservation program. Furthermore, establishing evaluation requirements for state permitting policies may potentially create opportunities for Tribes to begin more actively co-managing and co-monitoring gathering resources with state agencies.

[See the discussion on Tribal co-monitoring in “*A Defensive Approach Against Future Threats to Gathering Rights*” below.]

¹⁷ Marks-Block, T., Lake, F.K., and Curran, L.M. (2019). Effects of understory fire management treatments on California Hazelnut, an ecocultural resource of the Karuk and Yurok Indians in the Pacific Northwest. *Forest Ecology and Management*, 450. Retrieved from: <<http://www.sciencedirect.com/science/article/pii/S0378112719306826>>
Vasquez, I.A. (2019). *Evaluation of restoration techniques and management practices of tule pertaining to ecocultural use*: Humboldt State University. Retrieved from: <<https://digitalcommons.humboldt.edu/etd/282>>.
Riske-Gomez, J. (2016). *Traditional Environmental Knowledge (TEK) and Cultural Reconstruction: A Practical Application at the Red Bluff Recreation Area, Mendocino National Forest, Grindstone District*: Oregon State University.

Designate Tribal Cultural Centers as Gathering Hubs and “Referral Agents”

Tribes could bypass some of the problems associated with relying on park staff to effectively implement permit policies by designating a local Tribal organization -- like a Tribal land trust or Tribal cultural center -- as a “referral agent” that Tribal people within a region can contact to obtain gathering permits.

The Haramokngna American Indian Cultural Center has taken on an informal “gathering hub” role, as the center has been known to help Tribal members obtain passes to gather in the Angeles National Forest. The Haramokngna Center is a Native American-owned and operated cultural center located

in the Angeles National Forest that serves the Tribal and non-Tribal community. The USFS in the Southern California region offers “Adventure Passes” with a specific “Tribal” designation for Tribal people who gather in the forest. However, the passes do not constitute permits (since they are no longer required by the USFS). Rather, they allow gatherers to avoid parking tickets while they gather and alert forest staff and members of the general public of their presence in the forest, so that they are not harassed and/or cited.



Public agencies often do not know how to vet individuals that request gathering permits and can therefore be overly cautious (slow and tightfisted) about issuing gathering permits. However, Tribal cultural organizations -- like the Cafe Chia Collective, a grassroots group that provides information and education on plant resources for community harvesting and gathering of native plants, and the Haramokngna Center -- often engage with public agencies and have developed extensive networks in the gathering community. Consequently, Tribal cultural organizations can serve as proxies between the Tribal community and public agencies and facilitate more effective and efficient distribution of gathering permits to Tribal people.

Should a Tribal organization seek to become or to formalize their status as a “gathering hub” and “referral agent,” it would need to be advised by an intertribal council/committee/board -- consisting of representatives from Tribes in the region -- so that it can ensure that its distribution of gathering permits will respect the customs for access to specific gathering sites that have been traditionally observed by different family or village groups.

Co-management Agreements or Memorandums of Understanding (MOUs)

In recent years, California Tribes have sought alternatives to expand Tribal access to state parks beyond what gathering permits can achieve. Various Tribes have either established or are in the process of negotiating individual co-management agreements or MOUs with the Department of Parks and Recreation or other public agencies.



In 2016, the California Department of Parks and Recreation developed a Memorandum of Understanding (MOU) Program – which is managed under the Tribal Affairs Program in the department’s Cultural Resources Division -- to work with California Tribes on developing agreements that would support their stewardship goals on state park lands. The program is available to both recognized and non-recognized California Tribes. At present a total of 11 California Tribes are in the process of negotiating MOUs with the Department, though only two have been officially signed -- with the Koi Nation in 2017 and the Kashia Band of Pomo Indians in 2018. The MOUs are developed on a government-to-government basis between Tribes and the Department. The area that is covered through an MOU varies by Tribe, with Tribes negotiating for individual parks, several parks within a park district, or whole park districts. The Department does not generally impose many restrictions on the terms of

the MOU, leaving them open for negotiation so long as they comply with state and federal regulations. The agreements typically take one year to negotiate, and are finalized with signatures from both the Tribal chairperson and the State Parks Director. While there have been no mandatory renewal periods for MOUs in the past, the department is considering applying a two-year renewal period to provide the opportunity for Tribes to update agreements according to new needs and to allow Tribes to convey to the Department whether park districts that are party to the agreement are honoring the terms.

Some Tribes have also developed MOUs with individual parks independent of the State Parks MOU program.

When developed strategically, co-management agreements/MOUs allow Tribes to help create and enforce protocols that grant them substantive stewardship access to public lands extending beyond gathering purposes to true “co-management” of natural resources. These agreements seem to be the primary mechanism by which Tribes aim to institutionalize stewardship access to ancestral territories on non-Tribal public lands.

- ★ The Koi Nation entered into an MOU with the California Department of Parks and Recreation in 2017 that allows them to gather for ceremonial and cultural purposes (with some limitations) at Anderson Marsh State Park. The MOU is believed to be the first of its kind in state history between a Tribe and California State Parks. The MOU is the culmination of a long-term relationship that had been established years before between the Tribe and Anderson Marsh State Park after working together to produce a documentary -- *A Walk Through Time: The Story of Anderson Marsh* -- about the history of the lands within the park and the Koi Nation's relationship to them.

- ★ The San Luis Rey Band of Mission Indians in San Diego are in the final stages of completing an MOU with the California Department of Parks and Recreation that would grant Tribal members access to certain state parks in San Diego County.¹⁸
- ★ The Tolowa Dee-Ni' have established an MOU with the Six Rivers National Forest and are currently in the process of developing MOUs with the California Department of Fish and Wildlife and Redwood State and National Forest. In the early-2000s, the Six Rivers National Forest and Redwood State and National Forest began developing good working relationships with the Tribe's administration through continuous collaboration on different forestry projects. In the past few years, the Tribe and the agencies have discussed formalizing their relationship through co-management agreements. The terms have yet to be explicitly defined, but the agreements will focus on preserving and improving the health of forest resources and ensure that the Tribe has access to lands for stewardship purposes.
- ★ The Amah Mutsun have developed an MOU with Año Nuevo State Park that allows them to conduct ceremony and active stewardship activities on a Cultural Preserve that has been established in the park (Quiroste Valley Cultural Preserve). The agreement allows them to assist in the long-term project of restoring the preserve to pre-contact condition -- which includes fuel reduction efforts (thinning up to 10,000 trees) -- and to provide public education to the general public about traditional gathering and other Tribal stewardship practices.
- ★ The Amah Mutsun have also signed an MOU with Pinnacles National Park. In 2006, the Pinnacles National Park reached out to the Tribe with the intention of establishing a relationship and involving the Tribe in park management. The park had recently hired a new Superintendent, Eric Brunneman, who had previously worked with another Tribe while serving at a different NPS park, and insisted on local Tribes being involved in park management at Pinnacles National Park. Between 2011 to 2012, the park developed an MOU with the Amah Mutsun that ensures that tribal stewardship practices will remain a part of the park management strategy. The MOU was signed by Brunneman's successor and is renewed every five years.

Co-management agreements/MOUs may shield Tribes from common problems associated with rapid staff turnover at public lands agencies, including a sudden lack of access to lands, interruptions in planned stewardship activities that were negotiated under informal agreements, needing to re-educate new staff members about the informal policies and practices that it had developed over the course of years with previous staff, etc. However, MOUs are not legally binding, serving as guiding documents that are only as effective as the relationships on the ground between Tribes and park staff.

In some instances, co-management agreements/MOUs have allowed Tribes to achieve more parity (or close to parity) in natural resource management with public agencies than through other legally sanctioned consultation mechanisms (like AB52 and SB18). While these legal mechanisms are developed with the intent to provide Tribes more opportunities to participate in land use and development planning, in practice, public agencies limit Tribal participation to "notification" about or

¹⁸ Interviews with Diania Caudell, board member of California Indian Basketweavers' Association (CIBA), and Brittani Orona, Tribal Affairs Program Manager for California Department of Parks and Recreation.

“reviewing authority” over decisions, rather than sharing decision-making power throughout all stages of decision-making with Tribes.¹⁹

For example, the Karuk originally attempted to negotiate a collaborative forest stewardship project with the USFS through a timber sale contract informed by tribal consultation -- the Orleans Community Fuels Reduction and Forest Health Project (OCFR).²⁰ Through the project, the Karuk had hoped to utilize prescribed burning to thin trees in the project area (2,700 acres) and to manage their ceremonial areas in the forest. The project was collaboratively conceived and planned, but as soon as the contract was signed, the USFS proceeded with the project in a manner that was inconsistent with what the Tribe believed it had consented to in the course of consultation during the project planning phase. The Tribe was forced to sue the USFS to stop them from proceeding with the project. After the experience, the Tribe decided that it would be in their best interest to complete forestry projects through a Master Stewardship Agreement -- which they negotiated for with the USFS and signed in 2018. The agreement sets the terms for any collaborative forestry project between the USFS and the Tribe, ensuring that projects meet the Tribe’s stewardship standards.



It should be noted that this example is not an indictment or a dismissal of the importance of tribal consultation or government-to-government relationships. Moreso, it is meant to highlight some of

the current limitations of tribal consultation processes -- as they are implemented in practice -- and to point to the possibility that, in some instances, co-management agreements/MOUs could provide Tribes stronger and more enduring stewardship access to public lands than one-off contracts or agreements produced episodically with government agencies informed by “tribal consultation” (e.g. timber contracts, individual restoration project contracts).

In another case, the Tolowa Dee-Ni’ have developed an internal stewardship strategy to protect and manage six keystone species that they have passed into Tribal law (their Harvest Title in their Tribal Code). While the Harvest Title is only legally enforceable on their Tribal lands, the Tribe intends to extend the Harvest Title protections onto ancestral territories located on public lands through co-

¹⁹ Sanders, M. (2007-2008).

²⁰ 72 Fed. Reg. 59069. Six Rivers National Forest, California; Orleans Community Fuels Reduction and Forest Health Project. October 18, 2007.

management agreements with public lands agencies. They are currently piloting this strategy through their co-monitoring efforts with the California Fish and Wildlife Department on local Marine Protected Areas (MPAs). They will be assessing how they might use co-management agreements they develop with other public agencies more broadly to extend the protections in their Harvest Title in the future.

Effective agreements should include both substantive and procedural measures. They should outline common goals, roles and responsibilities, protocols for negotiation in the case of conflicts (accountability measures) and to develop a mutually-understood definition of what “co-management” constitutes.

Most importantly, Tribes need to scrutinize when and with whom they should enter into co-management agreements/MOUs to ensure that they are not diminishing their sovereignty status by contracting with state entities that might not recognize their tribal sovereignty.

Tribes that are specifically interested in participating in the State Parks MOU program should be aware that as more Tribes utilize the program, the Department will need to consider allocating more resources to fulfill the growing staffing needs for the program. The program aims to facilitate MOU negotiations through tribal consultation, which is a complex and costly process. There is a high risk that, in an effort to support Tribal stewardship rights through the MOU program, the Department may overpromise but under deliver due to the lack of funding and staff resources available to fulfill the program’s needs as it becomes increasingly utilized by more Tribes.

Park General and Management Plans: Pursuing the “Right to Habitat Protection”

The quality and quantity of plant resources are an overwhelmingly common concern among traditional gatherers. The population health of plants has been impacted by both Western land



management practices and, more recently, overharvesting due to the rising popularity of foraging among the general public. By necessity, policies to support traditional gathering on public lands must be developed in tandem with land restoration policies and/or projects that will preserve and restore plant populations.

Below regulations, general and management plans are the highest level of administrative guidance over decision-making for an agency. All park sites must develop general and management plans to guide recreation and natural resource management activities that can and will be undertaken on lands within their boundaries. General plans are meant to be updated every decade. However, because state parks are generally underfunded, some parks have never developed a general plan nor have plans that have not been updated in 40 to 50 years.

Traditional gathering is one of a number of practices under the wider umbrella of tribal stewardship practices that Tribes may seek to include in park general and management plans. As Tribes begin systematically inventorying gathering sites at specific parks, Tribes might also consider the kinds of stewardship practices that would be necessary at those parks to protect and preserve plant populations -- particularly if the plant species they are interested in gathering are scarce and/or in poor condition. Parks are less likely to support Tribal gathering on park lands if they believe that doing so will jeopardize the health of plant species that are already or at imminent risk of declining. Tribes intending to advocate for parks to include tribal gathering in their general and management plans will need to clarify how Tribal traditional gathering practices differ from modern recreational foraging and commercial harvesting practices, and how tribal stewardship practices can contribute to a park's mission to preserve and restore the health of the natural resources that they manage.

Without coinciding policies to increase access to as well as protect and restore plant resources, policies ensuring access to public lands for traditional gathering are impractical. As the courts have affirmed: "a right to hunt and fish is meaningless without a resource that one can harvest in the exercise of that right."²¹ Both the (1) right of access to public lands for gathering purposes and (2) directive to pursue habitat protection and restoration can be and have been incorporated into park general and management plans.

- ★ Amah Mutsun have incorporated their interests in tribal stewardship on lands overseen by the Midpeninsula Open Space District (MOSD) in the District's 2014 Open Space Vision Plan. MOSD is an independent special district in the San Francisco Bay Area that has acquired and preserved nearly 65,000 acres of regional public lands, including 26 open space preserves. In 2012, the Amah Mutsun were recognized as a stakeholder and invited by MOSD to serve as a member of the Community Advisory Committee that would advise the agency throughout the 18-month development of the plan.²²
- ★ The Amah Mutsun have successfully incorporated their stewardship responsibility to co-manage lands in Año Nuevo State Park's most recent General Plan. As the park was undergoing a General Plan update in 2008, the Santa Cruz park district archeologist worked with the Tribe to establish the Quiroste Valley Cultural Preserve, where the Tribe would be able to utilize traditional stewardship practices to help the park restore the land to pre-contact condition.
- ★ The Karuk and other Tribes have successfully introduced boilerplate language about potential Tribal co-management of Elk and other natural resources in the recently updated 2018 California Department of Fish and Wildlife Elk Management Plan. The language that was introduced into the plan may serve to further discussions about between Tribes and the Department to define what co-management agreements should look like and what they should achieve moving forward.

²¹ Goodman, E. (2000).

²² Interview with Valentin Lopez, Chair of the Amah Mutsun Tribal Band. Vision Plan. Midpeninsula Regional Open Space. <<https://www.openspace.org/our-work/projects/vision-plan>>

- ★ Cheryl Bryce, a Lekwungen (Songees) traditional gatherer in Victoria, British Columbia, has been actively cultivating allies in municipal park systems who are willing to support Native stewardship on public parks. She has been working with municipal parks to reduce their use of pesticides, given the health risks they impose on Native gatherers. In recent years, some of the parks have discussed including formal “no spray” policies in their park management plans to ensure that the informal “no spray” policy they had developed together to manage plants at the parks would outlive their relationship with her.
- ★ Most of the park co-management efforts between First Nations and Parks Canada have also been driven through individual park management plans.

Because of the potential implications on Tribal sovereignty, this alternative serves as more of an interim measure to protect resources until Tribes can develop more formal co-management agreements with individual state and municipal parks or a park systems. Tribes will need to determine whether they want to negotiate with state and municipal public agencies to include tribal stewardship activities in general and/or management plans, since there is a risk that these agencies may treat Tribes as more of an “interest group” than as sovereign nations.

However, because formal co-management agreements/MOUs can take a long time to develop (if the relationship-building that is required before official negotiations begin is taken into account), it will likely be necessary for Tribes to find immediate alternatives to protect plant resources to ensure that these resources are not already depleted by the time formal stewardship agreements are completed.

Sustainability and Climate Action Plans

Tribes might consider participating in planning efforts for on-going and upcoming city and county sustainability and climate action plans. Climate action plans are comprehensive roadmaps that outline the specific activities that municipalities will undertake to reduce greenhouse gas emissions, addressing activities impacting land use, transportation, building design, energy use, water demand, and waste generation. Municipalities generally outreach to different “stakeholder” groups during the planning phase for these plans -- though they may not be required to outreach to Tribal communities for these types of plans as they would for general plans under SB18. However, municipal general plans contain “elements” addressing specific planning categories -- including housing and economic development -- and an increasing number of municipalities are including “environment”, “open space”, and/or “sustainability” elements that speak to policy and program planning for public parks and other green spaces. California Tribes could advocate for their stewardship interests and specific interest in gathering rights to be incorporated in



any or all three types of plans, which guide municipal policy planning to support more sustainable development and serve as general land use and greenspace planning agendas.

Climate change impacts -- and will continue to impact -- not only the health of plant populations but eventually plant population distribution. Along with concerns about the quality and quantity of traditional plant foods and medicines, traditional gatherers have reported that gathering seasons have become more erratic and less predictable due to climate change. Plant migration -- changes to plant species distribution within and across ecosystems -- resulting from climate change is already a documented phenomenon, and there is no reason to believe that this will change as the climate crisis worsens.²³ Plant migration may inevitably alter the availability of traditional plant foods and medicines at ancestral gathering sites for some family groups within Tribes, since plants that may have existed in the past in some gathering sites may cease to exist and/or migrate into other gathering sites. The threat that climate change poses to the availability and distribution of plants should provide incentive for California Tribes to plan ahead for how they will secure long-term access to plant resources in the future.

- ★ In June 2019, the Los Angeles City County Native American Indian Commission and the Sacred Places Institute partnered with the Los Angeles County Office of Sustainability to host a convening exclusively for local Tribal communities to solicit their input on the County's first Sustainability Plan.²⁴ The creation of mechanisms that would enable Tribal communities to gather on public parks sans fees was among the priorities that were listed for inclusion into the plan.
- ★ In Arizona, the Cultural Resources & Historic Preservation Division of the Pima County Office of Sustainability and Conservation has worked with several Tribes to begin the process of updating park rules so that Tribes can collect plants for traditional cultural purposes on conservation lands. The Cultural Resources Division is coordinating with other County offices -- including the Conservation Sciences Division (within the Office of Sustainability and Conservation) and Natural Resources, Parks, and Recreation -- to address issues associated with developing County policies to allow Tribes to collect plants for traditional cultural purposes and to access to conservation lands in order to do so.²⁵

²³ Welch, C. (2017, April 27). Half of All Species Are on the Move—And We're Feeling It. *National Geographic*. Retrieved from: <<https://www.nationalgeographic.com/news/2017/04/climate-change-species-migration-disease/>>.

²⁴ OurCounty -- Los Angeles Sustainability Plan Tribal & Indigenous Communities Convening Notes. (2019). Retrieved from: <https://ourcountyla.lacounty.gov/wp-content/uploads/2019/06/OurCounty-Tribal-and-Indigenous-Communities-Convening-Notes_For-Web.pdf>

²⁵ Sezate, A.C. (2019). A Rare Conversation: A Proactive Approach to Cultural Resources Management in Pima County: The University of Arizona. Retrieved from: <<https://repository.arizona.edu/handle/10150/628085>>.



This alternative is potentially politically volatile, depending on the existing relations between the Tribal and non-Tribal community in the municipality. While the planning phase for these municipal plans present Tribes with the opportunity to make their stewardship interests on public land known to the local community, how effectively this forum would serve Tribes depends on both the way a municipality structures its outreach to Tribes and the appeal of the “message” that Tribes have developed to advocate for their stewardship interests on public lands. Ideally, a municipality would designate or Tribes would be able to request a separate forum to discuss their interests than the other outreach venues (workshops, charrettes, etc.) designated for the general community -- like the Tribal convening for the LA County Sustainability Plan.

As with park general and management plans, Tribes also need to weigh the political considerations of the impact that negotiating directly with a municipality would have on their Tribal sovereignty status, given the risk that some municipalities may treat a Tribe as more of a “stakeholder” than a sovereign nation.

Native Representation at State and Municipal Parks

Some individuals believe that requiring more Native staff at state and municipal parks could serve as a viable partial workaround to a formal gathering permit policy -- given that some Tribal members do not believe they should be required to obtain permits for gathering and will therefore refuse to utilize such a policy. Tribal members are often generally acquainted with the members of their communities and therefore can vouch for Tribal individuals if non-Tribal staff have any questions or uncertainties about what Tribal people are doing while gathering in parks.

In fact, the lifetime Tribal gathering permit policy that Los Padres National Forest established was possible because the office hired a local Native person, Pete Zavalla, as its Tribal Liaison. Zavalla, who came from the Chumash community and understood the needs of its gatherers, developed the lifetime permit policy -- a policy that remained even after he retired from his position. A couple of the state agencies that have made the most substantial strides to develop mechanisms to ensure that Tribal communities are more engaged in decision-making had a “champion” who came from the Native American community. Cynthia Gomez served at both CalEPA (as the assistant secretary of environmental justice and tribal governmental policy from 2008 to 2010) and at CalTrans (as the chief of the Native American Liaison Branch from 1999 to 2008). CalTrans created a separate branch for Native American Cultural Studies under Gomez’s guidance.

Having Tribal staff at parks would contribute to a more hospitable environment for Tribal people to gather without fear and anxiety of being consistently hassled by non-Tribal park staff and the general public. Native staff would be well-positioned to serve as “institutional change agents” at a park or an agency, educating non-Native staff about Tribal sovereignty stewardship. Merv George, Jr., the first

Native American Forest Supervisor in the history of the Forest Service in California, saw the limitations of relying solely on the USFS “tribal consultation” policy to change how the local USFS field office managed the forest and its relationships with local Tribes. Prior to joining the USFS and becoming the Forest Supervisor for Six Rivers National Forest, George Jr. participated in tribal consultation meetings as a former Hupa Tribal Council member, but saw the limited impact that consultation seemed to produce on forest management in the area. This motivated him to join the Forest Service, so that he could serve as an agent of change from within the agency. Since becoming the Forest Supervisor in 2014, he has helped to cultivate better working relationships between Six Rivers National Forest and local Tribes.

It may be worth considering advocating for parks to hire Native American cultural interpretation staff (if they do not already have them) and to implement a hiring policy that gives preference to Native people during the hiring of cultural interpretation staff at parks. In Humboldt County, Patrick’s Point State Park is one of the first state parks in California to have all Native interpretive staff. Tribes and Tribal organizations might also consider developing programs that support and encourage Tribal members to seek employment at state and municipal parks and other public lands agencies.

Tribes may also find it useful to begin strategically identifying the staffing and other management needs of different parks. Some parks are short staffed and/or lack the technical expertise to manage the lands they oversee due both to budget cuts in the last several years and the fact that public lands agencies are perpetually underfunded. In some cases, the staff at parks or the USFS have reached out to local Tribes to ask for their assistance. Various Tribes -- including the Amah Mutsun, Karuk, and Koi Nation of the Lower Lake Rancheria -- have noted that it was easier for them to pursue their stewardship goals on park and forest lands because the agencies tasked with overseeing them lacked staffing, funding, and/or sufficient expertise to manage them. As a result, some Tribes have been able to reframe their stewardship goals for public lands as mutually beneficial services they are willing to provide agencies in need.



In their efforts to increase their stewardship role over public lands, some Tribes have deliberately forgone approaching public agencies about traditional gathering on public lands as a matter of Tribal rights (“Tribal rights versus non-Tribal interests”) in favor of diplomatic inquiries about how they can help them address problems that impact both the Tribal and non-Tribal community (“Tribal and non-Tribal interests versus a shared challenge”).

- ★ In the course of their advocacy efforts to protect cultural resources with the City of Clearlake and Lake County, the Koi Nation consistently and strategically framed their stewardship goals to appeal to the municipalities’ unmet needs. In the 2010s, the City of Clearlake was in the midst of public relations crisis (having high crime rates, low education rates, appearing on “Worst Places in California to Live” lists) and the Lake County Planning Division was facing scrutiny over

repeated violations of AB52. The Tribe saw the problems that the City and the County were facing as opportunities to achieve their cultural resource protection goals by helping the City and the County enforce existing cultural resource protection laws (AB52 and SB18).²⁶

- ★ The Tolowa Dee-Ni' are currently working with the California Fish and Wildlife Department to evaluate the impact of the MLPA on marine life in some of their local MPAs. The state expended substantial resources on the MLPA planning process, but enforcement has been uneven, because the state has not provided sufficient resources to educate the public about MPAs. The Tribe is working with the Department and local universities to co-monitor the impact of the MLPA on MPAs near their lands as a way to expand its co-managing responsibilities off-reservation. Specifically, the Tribe is testing its ability to extend its internal Harvest Title protections for six keystone food species (that the Tribe has decided to protect under its own Tribal law) on off-reservation land through the co-monitoring efforts on the MPAs -- as a test case.
- ★ The Karuk have noted that no local forestry projects take place in the region that do not involve collaboration with the Tribe, because the USFS often does not have the capacity to implement projects without their assistance due to a shortage of local expertise and budget cuts.
- ★ Similarly, after a long history of poor relations with local Tribes in the region, in recent years, the Six Rivers National Forest has begun collaborating with local Tribes in earnest. The staff at Six Rivers National Forest learned that they were able to complete more forestry projects that were co-designed with local Tribes, because Tribes' TEK expertise enables them to plan projects that are more likely to pass the scrutiny of the environmental conservation community and therefore be implemented (instead of being obstructed by environmental lawsuits).

In the long-term, Tribes might also consider advocating that the California Department of Parks and Recreation establish a Tribal Advisory Committee similar to the advisory committees that exist at CalTrans and CalEPA -- the CalTrans Native American Advisory Committee (NAAC) and the CalEPA Tribal Advisory Committee (CalEPA TAC). CalEPA TAC includes representatives from federally-recognized and non-federally recognized California Tribes -- usually the environmental directors or program managers for Tribes -- who meet at least quarterly with the Secretary of CalEPA, the directors of each CalEPA Board, Department and Office (BDOs), the Tribal Liaisons.

Tribes have been able to develop highly functional working relationships with the tribal liaisons and other staff at CalEPA, in part because there is little staff turnover within the agency. The consistent communications with staff and transparent policies and procedures (established in the CalEPA TAC charter) have helped CalEPA TAC become a relatively effective forum for Tribes to communicate and advocate for their interests. These factors have likely also made CalEPA TAC more resistant to financial and political "shocks" that might otherwise derail and undermine their work.

This model could be replicated within the Department of Parks and Recreation with Tribal Historic Preservation Officers (THPO) -- who are generally each Tribe's point of contact on matters relating to cultural resources -- serving as representatives on a "Parks and Recreation Tribal Advisory

²⁶ Interview with Dino Beltran, Vice Chair and Tribal Leader of the Koi Nation of the Lower Lake Rancheria.

Committee.” Similarly to the CalEPA TAC, a Parks and Recreation TAC could facilitate meetings with Parks and Recreation executive staff to discuss issues of cultural resource protection and cultural practices, including traditional gathering, at state parks.

Reform Hiring Policies at State and Municipal Parks

Park staff hiring qualifications have likely contributed to the strained relations between Native people and the State Parks Department.

The Department's park rangers were first armed in the 1970s, though it was not until the 1980s that the department began transitioning to a more police-like management style and culture. From the 1980s until the past several years, all State Parks field officers were badged positions (hired from the pool of qualified state peace officers). This culture shift to “policing” in the ranger force combined with the Department’s practice of only recruiting for management positions from the pool of badged park rangers has likely calcified a departmental hierarchy that has made it difficult for other non-badged park staff -- like environmental scientists or cultural interpretive staff -- to have much institutional influence over park management policy and practice. Some park professionals have noted that the change in job requirements for the park ranger position in previous years -- wherein education requirements have been deemphasized while law enforcement experience has been elevated -- has resulted in a modern State Parks ranger force that more closely resembles specialized park police than the generalist rangers in previous generations who may have been better equipped to deal with resource management issues.²⁷

Overwhelming anecdotal evidence from the Native community seems to confirm that this may have contributed to a state park field officer force whose interactions with the public were filtered through a culture of law enforcement authority (e.g. aggression and excessive use of force in encounters with Tribal people gathering at the parks). This belief was shared by some park professionals who felt that the Department’s hiring policy overemphasized law enforcement experience as a prerequisite for not only park ranger positions but a number of other resource management, interpretive, and technical staff without also requiring environmental, anthropological, or other more salient expertise requirements -- to the detriment of State Parks’ mission, which includes environmental protection, resource management, and public interpretation objectives.²⁸ For a long time, having a badge was a prerequisite for park staff to eventually qualify for park Superintendent positions. Consequently, very few natural and cultural resource specialists or interpretive and technical staff have ascended to the position of park Superintendent.

However, this hiring practice began to change in 2004, after the Department was pushed by its own staff to reconsider this policy. Then State Parks Director Ruth Coleman subsequently developed a process to create non-badged park Superintendent positions. For the past several years, the Department

²⁷ Parkman, E.B. (2007). Science Notes Number 71.

²⁸ Parkman, E.B. (2007). Thoughts Regarding the Role of the Traditional Generalist “Ranger” Versus The Evolving Law Enforcement Specialist Within California State Parks. Science Notes Number 68. California State Parks. Parkman, E.B. (2007). Selected Input from State Park Staff Regarding Ranger Duties. Science Notes Number 71. California State Parks.

has begun hiring more non-badged park Superintendents -- including John Fraser, a former historian in the Department's Cultural Resources Division, who was promoted to Superintendent of the Capital District several years ago.²⁹

Municipal level park ranger positions appear to include similar law enforcement prerequisites -- with 290 hours of basic law enforcement training required for an individual to qualify for a Park Ranger position with the Sonoma County Regional Parks.³⁰

Consequently, in addition to pushing for more Native representation in park staff, Tribes may also consider advocating for park agencies to further deemphasize law enforcement experience while emphasizing more specialized anthropological, archeological, cultural, and environmental training in the hiring of field officers and district superintendents.

[Also see the “*State and Municipal Agency Staff*” subsection of “*Educate and Infiltrate: Public Education and Advocacy*” below.]

Tribal Gathering Clearinghouse: Tested Systems of Practices and Boilerplate Language

Tribal Gathering Clearinghouse



Public agencies have more ease cooperating with Tribal communities to develop traditional gathering policies and agreements if Tribes or Tribal groups can cite examples of existing policies and systems of practice -- agreement templates, models of arrangements between Tribes and other agencies, letters of support from other public agencies that Tribes have worked with -- that have demonstrated success. Public agencies should take responsibility for developing these systems, but are likely to find the prospect of being responsible for devising new policies and procedures burdensome and therefore disinclined to take the initiative to develop them. While some Tribal communities already have experience negotiating traditional gathering policies and agreements, some public agencies may be new to the process, and would therefore be reluctant to develop policies or enter into agreements that could potentially conflict with other directives under their agency’s mandates.

Consequently, Tribes could consider developing a database to aggregate and share systems of practice, policies, and MOU language that have already been vetted and put into place at existing state and municipal parks. However, moving forward in the development of these policies, agreements, and even informal systems of practices, Tribal communities should be explicit in the specific language that is

²⁹ Interview with Paulette Hennem, former Tribal Affairs Manager with California Department of Parks and Recreation.

³⁰ Job Description for “Park Ranger I” position at Sonoma County Regional Parks and Los Angeles County Department of Parks and Recreation.

developed in these agreements. The ambiguity of the language in certain policies and state codes have limited the ability of Tribes to secure widely-accessible, concrete Tribal gathering rights in the past.

At times, a misunderstanding of what “gathering” means to all parties to an agreement has led Tribal gatherers to negotiate agreements with a public entity that they believed would cover far more activities than what the public entity assumed. Tribes should clarify what “gathering” means to their community-- what activities it constitutes and the kinds of resources it may cover -- when negotiating terms. Staff at public lands agencies often assume that “gathering” is limited to the harvesting of specific materials for specific purposes -- usually basketry materials for basket weaving -- even though traditional gathering encompasses far more activities and purposes than basket weaving: subsistence in its entirety. Tribes should include specific and concrete language to convey this more all-encompassing concept of “gathering” in the negotiation of policies, agreements, and informal systems of practices with public agencies. Tribes will likely also need to develop accompanying strategies to facilitate conversations with public entities who might be less inclined to support traditional gathering on lands they oversee because they will be confronted with this more expansive notion of “gathering.”

In other instances, the ambiguity of the language in existing policies or codes may lead the general public and agency staff who are tasked with enforcing codes, policies, and regulations to fail to recognize established Tribal gathering rights. For example, Title 14, § 7.50 of the Fish and Game Code identifies the Karuk Tribe's inherent right to fish at Ishi Pishi Falls using hand-held dip nets, even out of the fishing season established for the general public. This section of the code was developed in response to a conflict that emerged between Tribal subsistence fishermen and non-Tribal sport fishermen in the 1970s. During this period when sport fishing became popular, Tribal subsistence fishermen and non-Tribal sport fishermen were in competition for salmon, leading to violent confrontations. The sport fishermen sought legal recourse, claiming that the Karuk did not have rights to fish off-reservation.

However, Tribal members continued to fish in the area, in assertion of their reserved right to fish, and were arrested and jailed. The local court system became so backlogged with "Tribal fishing cases," that there were no resources to spare to address other cases. The California Fish and Wildlife Department was subsequently ordered by the court to stop arresting Tribal fishermen. Confronted with their inability to effectively enforce the Fish and Game Code as it was written at the time, the Fish and Game Commission amended the code to recognize the Karuk's inherent right to fish in Ishi Pishi Falls. While the amendment was introduced to regulate non-Tribal fishing activity, the resulting



language is ambiguous and has led to the continual misinterpretation of the code as "allowing" the Karuk to fish at Ishi Pishi Falls.³¹

As with the term "gathering," Tribes might also take the opportunity to re-evaluate the language used in existing "co-management" agreements to ensure that it clearly defines and properly conveys true "co-management." Some public agencies seem to have a limited grasp of what "co-management" with Tribes means, using the term interchangeably to describe other working configurations between Tribes that involve less actual decision-making parity, conflating "co-management" with offering Tribes "notification" or an "advisory" role in management decisions.³²

Regional Atlas for Traditional Gathering

Tribes might also consider developing a digital regional atlas to help Tribal people -- especially those who have not developed the same networks of contacts at parks and forest lands as "occupational gatherers" and Tribal cultural resource specialists -- to access information about who it might be necessary to contact to gather at specific sites. However, the development and storage needs to comply with cultural protocols and maintain confidentiality, guard against cultural appropriation and cultural integrity. The atlas would not identify any specific gathering sites. It would only serve as an index for Tribal people to identify specific resources they might need that are associated with the areas where they would like to gather. The atlas would identify parcels of public land by the public agency (or agencies) that oversee them, provide contact information for tribal liaisons and/or park supervisors, and information about corresponding gathering policies or permit procedures that apply on the land.

The atlas could be developed and managed by a well-connected Tribal cultural organization (like a cultural center) that serves the Tribal communities in the region. Hardcopy, printable versions of the "Regional Traditional Gathering Atlas" could and should be made available for Tribal people -- like elders -- who may not have consistent and reliable internet access.

Other Strategies

CalTrans Adopt a Highway Program

Some Tribes have utilized CalTrans's Adopt-A-Highway Program to obtain access to and manage and harvest plants on right-of-ways. The program enables groups of individuals, organizations, or businesses to apply to help maintain sections of roadside within California's State Highway System. Adoptions usually span a two-mile stretch of roadside, and participation is free for all volunteers. Once an application is approved, it serves as a kind of permit for a group to access and work on their portion of the right-of-way. Each adoption covers a five-year period and is indefinitely renewable for groups "in good standing." Groups have the option to participate as volunteers or to hire a maintenance service provider to perform the work on their behalf.

³¹ Interview with Leaf Hillman, Director of Natural Resources and Environmental Policy for the Karuk Tribe.

³² Sanders, M. (2007-2008).

The Tule River Indian Tribe, in Tulare County (CalTrans District 6), has adopted a highway through the program as a means to manage and harvest bear grass on a CalTrans right of way. District 1 -- which serves Del Norte, Humboldt, Mendocino and Lake Counties -- has also developed resources specifically to assist Tribes with the adopt-a-highway process for Native plant management purposes.

Native Agriculture

In 2002, California State Parks acquired an 11-mile stretch of land containing primarily agricultural fields near Wilder Ranch State Park. The Santa Cruz District recently acquired a 40-acre parcel of farmland within the original acquisition, which it has proposed converting into “Native agriculture.” (The acquisition was made possible through a collaboration between State Parks, the Santa Cruz District, the Nature Conservancy, Peninsula Open Space Trust and other organizations.)

Even though the parcel was conditioned for agricultural use under the Santa Cruz County Farm Bureau, it was found to contain a major archeological site and subsequently declared a culturally sensitive area and added to the National Register of Historic Places. During the last years of the last California drought (2011-2017), a farmer who previously held the parcel defaulted on the water lease, allowing the Santa Cruz District to take the land out of agricultural production and to map and evaluate it for future use. While the parcel is zoned as prime agricultural land, requiring it to remain in agricultural production, the park district realized that “agriculture” is not narrowly defined in zoning terms. They subsequently reached out to the Amah Mutsun to inquire about their interest in cultivating traditional plants, like dogbane, soaproot, and angelica in the areas of the parcel, just beyond the archeological site, that had already been regularly cultivated.

While State Parks are not normally in the business of purchasing agricultural lands, Sonoma County Agricultural Preservation and Open Space District (SCAPOS) holds over 111,000 acres of agricultural and open space lands and has already developed working relationships with Tribes in Sonoma County, like the Kashia Band of Pomo Indians. Tribes in the region might consider using the precedent set by this example to approach special districts and other land conservation organizations that hold and protect agricultural lands about keeping some of these lands in sustainable production by converting them to “Native agriculture.” This option may also provide Tribes an alternative or additional supply of plant materials from those found in some of the currently environmentally-degraded lands within state and municipal parks.

LONG-VIEW: Changing Decision-Making Structures

Cultivate Relationships

Most Tribal staff and gatherers emphasized the absolute necessity of developing relationships with park staff in order to advance their gathering rights. At times, these relationships have resulted in staff on site “overlooking” policies that might ordinarily prevent Tribal people -- particularly non-recognized or non-affiliated Tribal people -- from gathering on public lands. Some of these relationships have evolved into partnerships (formal and informal) that have helped Tribal communities secure

consistent access to sites for gathering purposes. In many cases, without the assistance of good relationships with agency field office staff to facilitate effective implementation of formal gathering policies, these policies are treated as more of an inconvenient formality than a directive that staff are obliged to carry out.

- ★ In the East Bay, Ohlone, Bay Miwok, and Delta Yokuts peoples have limited plant gathering access at Coyote Hills Regional Park and other East Bay Regional Park District (EBRPD) parklands, largely as part of cultural programming at District parklands, but also for personal and tribal use by permit. This relationship, which began in the 1980s with efforts to replicate old-time structures, tule boats, and other objects by retired Naturalists Norm Kidder and Jan Southworth, expanded in the mid-1990s, when its now retired Naturalist Beverly R. Ortiz, also an Ethnographic Consultant, founded and began coordinating an annual Gathering of Ohlone Peoples at Coyote Hills, followed by the use of an existing agency-wide Departmental Technician/Senior Intern (DT/SI) position to provide paid opportunities for as many as ten Ohlones annually to share their history and cultures with the public at Coyote Hills and other District parklands on an occasional, but on-going basis through a series of cultural demonstrations and workshops, evening lectures, and open houses at a more-than-2,000-years-old Tuibun Ohlone village site (shellmound).

As part of these efforts, Ortiz facilitated informal systems of access for local tribal peoples to cultural materials in parklands where she served as a cultural interpreter from 1989-2014. Having studied Native California history and cultural skills since 1976 with tribal elders from varied regions of the place now known as California, upon her arrival at Coyote Hills Regional Park in 1989/1990, Ortiz began developing relationships with individuals from the local Native community and working collaboratively with them to develop culturally-specific programming based on: (1) their family and community history and cultural involvements; (2) the early 1900s, unpublished field notes of linguists and ethnographers with Chochenyo-, Rumsien-, and Mutsun-Ohlone speakers; and (3) the contemporary practice of Native Central California cultural skills, such as old-time acorn soup making, and the making of soaproot brushes and dogbane cordage, based, in part, on the knowledge so generously shared with Ortiz by Central California elders, as well as workshops and field trips facilitated by Ortiz with some of those same elders, including Julia Parker, the then Cultural Programs Supervisor at Yosemite National Park, and the late Lanny Pinola, then a cultural interpreter at Kule Loklo, a Coast Miwok cultural exhibit at Point Reyes National Seashore. As part of these efforts, Ortiz leveraged her position with the Park District to enable Native people with cultural affiliations to District parklands to gather plant materials in parklands, including in otherwise inaccessible areas in parks, and to secure parking fee waivers for them, all with the support of agency managers, supervisors, and field staff. Eventually, the Ohlone Gathering and other cultural programs expanded to include the participation of more than 70 individual Ohlones and the leadership of every Ohlone tribe and tribal organization in existence during these years.

The DT/SI Program that Ortiz coordinated from 1996-2014, known internally as the "Ohlone Intern Program," was an enhanced version of an existing program through which an Ohlone from the Ohlone Indian Tribe, Inc., and another from the Muwekma Ohlone Tribe conducted occasional programming at Coyote Hills, an effort initiated by EBRPD's then Assistant

General Manager of Park Operations Jerry Kent, as overseen by Coyote Hills' then Supervising Naturalist Norm Kidder. After Ortiz left Coyote Hills in 2014 to become EBRPD's first-ever Cultural Services Coordinator, the Ohlone Intern Program transitioned from a part-time, employee-based program with a training component, limited to ten Ohlones, to a contract program through which all interested Ohlones are paid on a program-by-program basis.³³

Today, when Karkin and Chochenyo Ohlone Tribal members seek to gather at the Coyote Hill Regional Park, they contact park staff to let them know what and when they want to gather. The park staff then assist Tribal members by taking them to sites that may have good supply of the resource they seek to gather, at times helping to transport elders to gathering sites and assisting with gathering if the Tribal members want help doing so.³⁴

- ★ The Koi Nation and Chochenyo and Karkin Ohlone Tribes have -- or are developing -- relationships with city government staff that they have leveraged -- or intend to leverage -- to support their advocacy efforts to increase stewardship access to County-managed lands.
- ★ Some Chumash Tribes have been able to gather plant materials on federal lands on the Vandenberg Air Force Base in Santa Barbara County through a "book" system that was initiated in the 1970s. The system only required that Tribal individuals intending to gather log their presence at the base in "the book" and present proof of Tribal affiliation (Tribal ID). The system began when one Tribal member -- who owned the first cultural resources company in California -- was hired by Vandenberg Air Force Base to help them mitigate disturbances to a number of old Chumash villages located on the base while renovations were being undertaken on site. The Tribal member, who developed a personal relationship with staff at the base, communicated the Tribal community's desire for access to the plant materials that were on the base, leading to the creation of the "book" system. The system extended to all Chumash Tribes in the area for over 20 years until September 11 occurred, after which changes to federal policy resulted in only one federally-recognized Tribe (the Santa Ynez Band) having access to the base.
- ★ The Amah Mutsun have cultivated an extended network of relationships that grant them significant stewardship access to state and municipal parks. The Tribe is co-managing a Cultural Preserve at Año Nuevo State Park (Quiroste Valley Cultural Preserve) with the park. It has also developed an informal agreement with the California Department of Fish and Wildlife that secures them gathering access to Cañada de los Osos Ecological Reserve in Santa Clara County. The agreement allows them to gather a small amount of plant resources for Tribal use, while ensuring that more than enough remains for other wildlife. Elsewhere in the County, they have developed a relationship with Chitactac-Adams Heritage County Park that allows them to gather within the park. The relationship began in 2000 when the Tribe was invited to participate in educational programming about Native culture at the park.³⁵
- ★ In Six Rivers National Forest, the relationship that Ken Wilson, a previous Heritage Resources Program Manager, had with LaVerne Glaze and other basketweavers in the Orleans area led him

³³ Interview with Beverly Ortiz, former Cultural Resources Coordinator for the East Bay Regional Park District.

³⁴ Interview with Corrina Gould (Sogorea Te' Land Trust).

³⁵ Interview with Valentin Lopez (Amah Mutsun).

to advocate for the leadership at Six Rivers National Forest to learn more about Indigenous rights and prescribed burning. The forest eventually established a program in the 1990s, "Follow the Smoke Passport in Time" which offered volunteers a chance to camp with California Indian basket weavers for a week every year and help them process materials and weave baskets. Volunteers also helped manage the forest for future basketry materials by thinning heavy fuels and building fire breaks to prepare for Forest Service controlled burns. After transitioning to the Heritage Program Manager position with the BLM, Wilson was also involved in development of the Region 5 BLM and USFS Traditional Gathering Policy.

Tribes and archeologists have a long, complex and often adversarial history. Tribes are looking to build a stronger network with archeologists that have demonstrated positive working relationships and respect for tribal cultural protocols and authority. Some of the informal relationships that led to opportunities for Tribes to establish more substantive access to public lands have included positive working relationships with archeologists. Archeologists are often well-connected with the staff at public lands agencies and land management/conservation organizations and can work to connect Tribes to their contacts. There are some examples of archeologists have directly advocated on the behalf of Tribes in support of their stewardship goals.

- The Amah Mutsun's relationship with Año Nuevo State Park began in 2004 -- an informal relationship until 2007. The State Parks archeologist from the Santa Cruz district, Mark Hylkema, and three UC Berkeley archeology doctorate students (one of which was also a member of the Amah Mutsun) were working on a research project to evaluate the impact that historic Native land management had on an area within Año Nuevo State Park. Knowing that the park included important traditional Native American traditional cultural resource sites and that the Tribe was undertaking land restoration work, the team invited the Tribe to become part of the research project. The scientific studies that the archeologists were conducting with the Tribe coincided with a General Plan update the park was undertaking in 2008, so they used the opportunity to work with the Amah Mutsun to establish a Cultural Preserve in the park. After the General Plan, which included the establishment of Quiroste Valley Cultural Preserve, was approved by the State Parks Board of Commissioners in 2009, the Amah Mutsun developed an MOU with the Año Nuevo State Park which allows them to continue their work to relearn and reintroduce tribal stewardship practices on the preserve. Moreover, because the Amah Mutsun are a landless Tribe and a majority of their community live out of the area (in the Central Valley), the park has also provided a space for the Tribe to use (barring weekends) when they are working on the preserve and facilitating their youth stewardship program (80 acres of land adjacent to the preserve in the park).
- ★ Breck Parkman, former Bay Area District Archaeologist for California State Parks, helped to facilitate Native gathering in his district by being one of the primary advocates in the field for the Tribal gathering permit policy after it was first established in 1985. He was likely one of the only state park staff at the time to make concerted efforts to share information about the policy with Tribal communities whenever he was out in the field. He was also a leading advocate to create non-badged park Superintendent positions in the 2000s. Prior to that time -- starting in the 1980s -- the State Parks Department enforced a policy that promoted only staff with law enforcement experience to the Superintendent position; a policy that likely contributed to a

pervasive State Parks culture that resisted or was even hostile against Native gathering on state park lands.

- ★ Prior to the passage of a formal CalTrans tribal consultation policy, the agency had been working with archeologists since the early 1970s to assist with cultural resource protection, due to the passage of both National Environmental Policy Act (NEPA) and California Environmental Quality Act (CEQA). In 1970, the archeologists, who worked closely with Tribal communities to assist with mitigation of damage to cultural resources on highway projects, often served as both points-of-first-contact and mediators between CalTrans and Tribal communities. Requests for access to land on CalTrans highways systems for gathering purposes were often brought to the agency's attention through communications the Tribes had with archeologists consulting on these projects.
- ★ CalTrans's Native American Advisory Committee (NAAC) and Tribal liaison program exist due in large part to the advocacy efforts of a small group within the agency -- that included two archeologists and a Pomo Indian -- that lobbied for Native representation in state transportation planning in the late 1990s.

CalTrans is funded by the Federal Highway Administration (FHWA) and therefore is subject to both federal and state laws. In 1991, Congress reauthorized a transportation funding bill, the Intermodal Surface Transportation Efficiency Act (ISTEA), that included requirements for public agencies to involve Tribes in statewide transportation planning efforts. In the same year, CalTrans established "affirmative action" advisory councils for underrepresented groups (ethnic minorities, women, and disabled people) composed of CalTrans employees from all programs at headquarters and each district.

The American Indian Advisory Council included an ISTEA subcommittee whose intent was to increase Tribal government involvement in transportation planning and establish a Native American Advisory Committee and a tribal advisor position in the CalTrans Director's office. In 1991, the ISTEA subcommittee met with the Deputy Director of Transportation Planning, who proposed a Native American Advisory Committee be established. The Deputy Director subsequently submitted to the agency a request to establish a Tribal Advisor position in 1993, and, in 1995, CalTrans issued a directive to establish External Advisory Committees.

However, in 1996, California passed Proposition 209, which amended the state constitution to prohibit state government agencies from considering race, sex, or ethnicity in state employment, public contracting, or public education -- effectively ending the practice of affirmative action and resulting in the dissolution of CalTrans's ethnic advisory councils. Even though the American Indian Advisory Council had disbanded, the ISTEA subcommittee continued their advocacy efforts, emphasizing that Native American Tribes did not merely constitute an ethnic group but sovereign political entities whose interests could not be properly represented without an auxiliary CalTrans body. Three members of the former ISTEA subcommittee led the efforts to advocate to CalTrans management for the reinstatement of a Native advisory council and the establishment of a Tribal Liaison position -- with the support of the Deputy Director of Transportation Planning. These individuals included two anthropologist/archaeologists from the CalTrans Cultural Resources program and a Pomo Indian who worked at CalTrans Equipment shop at the agency's headquarters.

The Deputy Director -- who had long supported these efforts -- directed his staff to develop procedures for working with Tribal governments and announced the establishment of the CalTrans Native American Advisory Committee (NAAC) at a Tribal Transportation Conference meeting in May 1997.

In 1999, a Native American Liaison position was established in the Division of Transportation Planning, with the position evolving into the Native American Liaison Branch chief, overseeing a staff of three employees. The program was eventually expanded to establish District Native American Liaison positions in the Transportation Planning units for 10 of the 12 CalTrans districts with federally-recognized tribes -- excluding District 7 (Los Angeles) and District 12 (Santa Ana).³⁶

While many of the advances in agency practice that supported increased Tribal influence on decision-making were due in part to (or even in spite of) new legislation and policies (like CEQA and NEPA or California Proposition 209), the reach of these laws and policies were highly dependent on mediating actors on the ground. The brief examples above indicate that archeologists have been key advocates for long-term agency policy changes that support Native gathering on public lands and Native decision-making in resource management.

Beyond Relationships

The extensive relationship networks that Tribes have developed over the course of decades have at times enabled them to initiate cultural and institutional change at parks or within agencies that have given them a relatively high level of de facto stewardship authority over specific public lands. While all Tribes emphasized the need to build on-the-ground relationships to support their stewardship goals, it is imperative to develop lasting “structures” -- common practices and/or organizational habits, if not formal policies and regulations -- that will facilitate access to public lands that outlive the tenure of specific staff.



³⁶ Interview and emails with staff from the CalTrans Cultural Studies Office and Division of Transportation Planning: Jodi Brown, Sarah Allred, Lonora Graves, and Tina Biorn.

The obstacles preventing California Tribes from exercising their right to gather on public lands go beyond California's treaty history and the lack of state codes or regulations acknowledging and enforcing their right to gather. Many of the barriers include structural racism. Native people and tribal communities in the California are historic communities of color with long histories of displacement from colonization in the past and gentrification, today. A primary concern of tribal community members is maintaining traditional food and cultural resource landscapes/areas and preventing them from being polluted and/or cleared for new development to address housing losses from wildfires and job/business creation. CIMCC and TYA have worked to strengthen intact landscapes/areas and develop more knowledge in the wider community about their importance by injecting Native ecological stewardship knowledges and practices in a program that trains youth in workforce development and ecology. However in doing this work we have repeatedly experienced the break down and failure of meaningful partnership and participation because colonial structures and white privilege continue to support institutional racism, erasure and stereotypes. While the dominant society often identifies itself as educated and respectful of diversity there remains much work to be done before equity and shared authority can be achieved. Personal and organizational assessments that challenge foundational beliefs and an examination of power structures are necessary. Indigenous representatives are often invited for participatory opportunities with environmental stewardship organizations in a manner that contributes to tokenism. The conversations typically gravitate to what these organizations can learn from native partners rather than how they can work with native partners. Unfortunately, attempts to educate can also result in cultural appropriation further eroding community relations. There are also tribal political complexities given the number of tribes in the tri county region. It is very common that when a tribe or tribal organization suggests that a partner is operating from false narratives, the partner organization will look to another tribe or tribal representative/organization that doesn't challenge the status quo. While these dynamics may shift and improve over time, it is critical that effective strategies for addressing these issues are developed. One best practice is that non-native partners engage tribal partners not just as tribal representatives but as experts in the field. Thus, a necessary strategy moving forward is a commitment to engage tribal community members in education and leadership development that results in a power change. In the *Inconvenient Indian*, author Thomas King asks "What do Indians Want?" His answer illustrates that impact upon our community, "Land. If you understand nothing else about the history of Indians in North America, you need to understand that the question that really matters is the question of land. Land contains the languages, the stories and the histories of a people. It provides water, air, shelter and food. And land is home." We are motivated to increase our capacity and infrastructures in order to be recognized as experts and authorities in the protection of our homelands. We must address mindsets that prevent decision-makers and the general public from understanding the importance of Tribal stewardship of natural resources to Tribal communities and the benefits they confer to all communities. Both native and non-native agencies, governments, and organizations need to start thinking long-term about how to reform existing -- and, in some cases, build new -- political and cultural infrastructure to secure more substantive and enduring gathering rights for California tribal communities.

Alliances with Non-Tribal Partners

Participating in Multi-stakeholder Coalitions

Long-lasting policy changes that will secure substantive gathering rights on public lands will require a coalition of Tribal and non-Tribal partners whose interests will mutually support and be supported by Tribal environmental stewardship. Multi-stakeholder coalitions tend to be -- but are not always -- convened by public agencies (at the county, state, or federal level). Some have been established to address conflicts of interest that have arisen in response to agency project proposals and management plans. Multi-stakeholder coalitions have been especially helpful to Tribes as natural forums to educate other groups about Tribal stewardship and to identify allies that they can work with to support their stewardship goals.

- ★ The Tolowa Dee-Ni' are a member of a multi-stakeholder collaborative formed shortly before 2010 in response to a controversial USFS forest management plan that had garnered highly negative responses from almost all impacted community groups. The collaborative was convened as a forum that would allow them to identify common goals and to negotiate revisions that would accommodate these goals. However, the group has remained as a forum to implement projects on Forest Service lands -- having developed bylaws and agreements to guide their work together.³⁷
- ★ The Amah Mutsun have worked to advocate for Traditional Ecological Knowledge to more widely utilized by the Santa Cruz Mountains Stewardship Network -- whose members consist of over 20 major landowners in the Santa Cruz region, including regional parks systems and land conservation organizations. The network is a "is a region-wide and cross-sector collaboration of independent individuals and organizations who are committed to practicing effective stewardship on their own lands and coordinating their efforts with other land stewards to enhance stewardship on a regional level." The Amah Mutsun are a founding member of the network.³⁸

Working through multi-stakeholder coalitions allows Tribes to ensure that the community recognizes the role that Tribes play in local land management, can help to normalize the involvement of Tribes in public land management, and help the organizations and public agencies who are members of these coalitions develop institutional memory of their working relationship with Tribes that can survive internal staff turnover throughout the years. Moreover, once shared goals have been identified, multi-stakeholder coalitions allow Tribes to pool their resources with coalition members to implement those goals.

It cannot be overstated that some of these partnership-building efforts will require persistent and strategic diplomacy. Several of the Tribes who have or are in the process of developing formal

³⁷ Interview with Cynthia Ford, Habitat and Wildlife Program Manager, and Jaytuk Steinruck, Tribal Resource Specialist, for the Tolowa Dee-Ni' Nation.

³⁸ Santa Cruz Mountains Stewardship Network. Retrieved from: < <http://scmsn.net/about>>

MOUs with state parks or the USFS were only able to do so after spending decades establishing a trusting, working relationship with staff at different agencies.

Allying with Land Conservation Organizations

Some tribes have been able to form alliances with conservation organizations who are increasingly aware of and interested in including Tribal communities in decision-making for land use and natural resource management. These organizations often collaborate with state parks and other public lands agencies on restoration projects, and are therefore often well-positioned to facilitate relationships between Tribes, private landholders, and public agencies. In recent years, these organizations have increasingly collaborated with Tribes on land restoration projects and to develop conservation easements that have been adapted to support Tribal gathering rights on protected lands.

- ★ The Karuk have worked with the Nature Conservancy to support their efforts to reintroduce tribal stewardship activities onto forest lands. In 2007, the Tribe initiated a collaborative stewardship project -- Orleans Community Fuels Reduction and Forest Health Project (OCFR) -- with the USFS that would utilize prescribed burning to assist with tree thinning for 2,700 acres of forest within the Six Rivers National Forest. The project eventually failed due to a breakdown in communication with the USFS after the timber sale contract -- through which the project was being facilitated -- was signed. However, the Tribe had developed a longstanding relationship with the Nature Conservancy due to their shared commitment to reincorporating prescribed burning into land management regimes, and with the conservancy's assistance, initiated a 2 to 3 year "open standards process" with the wider community to identify priorities and objectives for local forest management. What emerged was an agreement that would set the stage for the Western Klamath Restoration Partnership (WKRP) project, a large-scale collaborative land and fire management effort in the Western Klamath Mountains of Northern California.
- ★ The Kashia Band of Pomo Indians worked with Trust for Public Land (TPL) to develop conservation easements to support their gathering rights on private lands. In 2015, the Tribe completed the purchase of 688 acres of land, the Kashia Coastal Reserve, with the help of TPL -- an undertaking that took several years and the collective fundraising and administrative efforts of several county agencies, private donors, and local nonprofits. The Sonoma County Agricultural Preservation and Open Space District (SCAPOSD) holds two conservation easements over certain segments of the Kashia Coastal Reserve. TPL functioned as a fundraiser and facilitator who negotiated the terms of the overall land acquisition as well as the conservation easements that were placed on portions of the land with multiple public stakeholders (funders and easement holders, including SCAPOSD). The easements held by the SCAPOSD includes language that was added specifically to permit the gathering and management of vegetation for ceremonial and subsistence purposes on the land, which is not normally included in the conservation easements held by the SCAPOSD.

Receiving support from other organizations that can vouch for a Tribe while it develops new relationships with other public entities has been an extremely effective strategy for Tribes to expand stewardship access to public lands -- akin to a peer-to-peer support network. Similarly, a state park is more likely to engage with Tribes to develop agreements if a sister park has already undergone and

completed the process.³⁹ This was true for the Amah Mutsun, whose relationship with Año Nuevo State Park contributed to the willingness of Pinnacles National Park to work with the Tribe. The Amah Mutsun have offered to broker meetings between the Año Nuevo State Park officials and officials at other State Parks to help other California Tribes initiate co-management relationships with their local state parks.⁴⁰

[Also see the “*Tribal Gathering Clearinghouse*” section above.]

Set the Stage for Strategic and Equitable Engagement: InterTribal Consortiums

Cohesively Negotiating Intra- and Inter-Tribal Gathering Rights

Having a centralized forum for Tribes to collectively discuss Tribal stewardship issues and workshop potential solutions would be an effective means to ensure that all Tribal people are represented in policy planning and implementation. Some Tribal people have expressed that modern



Tribal governments should not be given sole authority to “legislate” gathering rights, given that they do not reflect traditional Tribal governance. Gathering practices vary with family or village groups, and expecting a modern, centralized government to have the foresight and capacity to negotiate the gathering rights of all Tribal people within their borders is both impracticable and offensive to some Tribal people. Vesting sole power to individual Tribal governments to effectively decide who can and who cannot have access to gathering sites is problematic, because the complex history of land theft and displacement of Tribal people in California has resulted in some Tribal people being enrolled in Tribes that are far from their ancestral lands.

Any Tribal entity that will negotiate for stewardship access to lands with non-Tribal government agencies will need to respect the traditional customs that have governed access to specific gathering sites in the past. An intertribal consortium may be best suited to this purpose. An intertribal consortium will allow individual Tribes to collectively interface with state and municipal parks agencies, while retaining individual sovereignty to decide amongst themselves how to share management responsibilities for lands and to collectively negotiate access rights. This alternative avoids wholly situating regulatory power over gathering rights with individual Tribal governments -- which is politically, culturally, and spiritually problematic to some Tribal people. To some degree, it also satisfies the imperative to accommodate family and village group rights to specific gathering areas that cannot be adequately accounted for through formal, rigid “legislation” or “code.”

³⁹ Interview with Timara LotahLink, member of the Chia Cafe Collective.

⁴⁰ Interview with Valentin Lopez (Amah Mutsun).

An intertribal consortium is conducive to developing consensus-building processes for decision-making around gathering rights and allowing decision-making to be both democratic and centralized between various Tribes. Intertribal councils or Tribal organizations that work with and convene Tribes in their region, like the InterTribal Sinkyone Council (ISWC) in Mendocino County, Ancestors 1 in Lake County, the Maidu Summit Consortium in Plumas County, already exist.

Moreover, an intertribal consortium may address a diplomacy dilemma that park agencies face when the parks they manage overlap the ancestral territories of multiple Tribal communities. Public agencies are likely inclined to avoid potential park projects or agreements that risk bringing with them problems stemming from inter-Tribe politics. State park districts and the State Parks Department prefer to work with a consortium of Tribes rather than to mediate negotiations between individual Tribes with multiple claims to areas within a park.⁴¹ Similarly, county and city park systems may state that they are overwhelmed by the possibility of having to negotiate territory conflicts between multiple Tribes with possibly competing claims to different sites within the parks they manage -- making them reluctant to actively engage with Tribes. Some Tribal staff have even observed that the uncertainties around negotiating competing claims with different Tribes may be a motivating factor in county or regional park systems' lackluster outreach to local Tribes on land management issues.

Designating an intertribal consortium to mediate these matters would also help Tribes overcome favoritism that sometimes occurs when parks or park districts develop seemingly "exclusive" relationships with individual Tribes, to the detriment of other local Tribes who might also have gathering sites located within the park. However, it is important for Tribes to recognize that what might appear to be "favoritism" is not always a political choice. Rather, it is likely an unintentional outcome of some public agencies, like the State Parks, having more confidence working with Tribes that appear to be in the best position to co-manage lands; in other words, those with the most financial resources, recognized expertise, and strong partnership networks. A consortium would allow Tribes to pool their collective resources together, strengthen their collective capacities to co-manage land, and make their collective capacity apparent to public agencies who might otherwise overlook or avoid opportunities to work with individual Tribes who have a less established track record for co-managing lands.



⁴¹ Interviews with Mark Hylkema, Santa Cruz District Archeologist (California Department of Parks and Recreation), and Brittani Orona, Tribal Affairs Program Manager (California Department of Parks and Recreation).

Furthermore, it is also highly likely that Tribes will be required to work through a consortium in the future to address environmental issues impacting traditional gathering activities. Climate change-fueled plant migration is already occurring and is likely to continue as the climate crisis worsens. Plant migration may inevitably cause plant species that were once available in some family gathering sites to cease to exist and/or migrate into other gathering sites. Coming together in an intertribal setting to negotiate how Tribes in the region want to address access rights as this happens may be inevitable in the future.

Consortium Membership



When selecting representatives for an InterTribal consortium, the group should ensure that it does not privilege candidates with institutionally recognized status and, therefore, clout in the wider community (e.g. those with degrees and/or those who occupy political offices) over Tribal practitioners who may not have “formal” education but who are well-versed in traditional stewardship practices and lifeways. Both groups are necessary for the consortium to be effective at negotiating between the Tribal community and non-Tribal state and municipal public agencies. Through the consortium, traditional practitioners, who have a long memory of the land and working stewardship expertise, need to be empowered to advise the representatives who are well-connected to non-Tribal decision-makers. These individuals can then more effectively interpret the stewardship needs and goals of the Tribal community to government

agencies and translate them into mechanisms of change that support traditional gathering on public lands (proposed systems of practice, policies, regulations, etc.).

As a consortium develops their membership criteria, it might also consider how it should address equity issues in decision-making between federally-recognized Tribes and non-recognized Tribes. Some Tribal individuals have expressed that federally-recognized Tribes should be leveraging their recognition status to benefit Native people as a whole, given that many Tribes lack recognition status through no fault of their own -- as a result of colonial, systemic, racist policies. Admittedly, some consortiums, like the InterTribal Sinkyone Wilderness Council, have deliberately chosen to include only federally-recognized Tribes to secure their legitimacy as an intertribal authority with non-Tribal governments and other non-Tribal decision makers.⁴² Similarly, some federally-recognized Tribes may

⁴² Johnson, J. (2016). Land repatriation as decolonization: Indigenous methods of reclaiming land and reversing “colonial spatial violence”.: Vassar College. Retrieved from: https://digitalwindow.vassar.edu/senior_capstone/562/

also have concerns that being a member of an intertribal consortium with non-affiliated Tribal representatives will diminish the state's perception of their Tribal sovereignty status.

Realistically, many currently non-recognized Tribes in California may never be able to successfully petition the federal government for federal recognition due to the onerous list of criteria that Tribes must satisfy. Tribes can also sue the government for recognition or seek recognition through Congressional legislation, but these alternatives present their own set of challenges. Moreover, Tribes that were terminated by an act of Congress can only be reinstated by Congress and are ineligible to petition the federal government for recognition -- a problem since many California Tribes were terminated in this way between the 1950s and 1960s.

While having a land base -- that can eventually be placed in federal trust -- is not a requirement for Tribes to achieve federal recognition, having trust land is necessary for Tribes to access many federal programs, including those that might support their ability to steward off-reservation lands, such as 638 forestry contracting.⁴³ Tribes that manage to secure recognition still face the daunting task of purchasing land in-fee and the equally daunting bureaucratic process of petitioning the federal government to place that land into federal trust. Because much of the land in California -- and therefore most Tribal ancestral lands -- is considered prime real estate, the prospect of California Tribes purchasing land is highly unlikely (though it has been accomplished in rare instances, like the Kashia Band of Pomo Indians' purchase of the Kashia Coastal Reserve). The prospect for California Tribes to successfully petition the federal government to place purchased land into federal trust is even more unlikely, given that in-fee lands in California are a large source of tax revenue.



Consequently, an intertribal consortium should consider developing mechanisms to ensure that non-recognized or non-affiliated Tribal descendants will also have decision-making power over their gathering rights. These mechanisms would merely replicate traditional relationships of reciprocity between Tribes, some of which live on today.

Some non-recognized Tribes, particularly in Southern California, have formed solid, reciprocal relationships with recognized Tribes who are willing to act on their behalf. There are seven Chumash Tribes in the Santa Barbara County region, even though only one Tribe is federally-recognized (the Santa

⁴³ Fee To Trust. Indian Affairs. U.S. Department of the Interior. <<https://www.bia.gov/bia/ots/fee-to-trust>>.

Ynez Band of Chumash Indians). However, the Santa Ynez Band have been known to assist the other non-recognized Chumash Tribes in cultural resources management issues. Similarly, one federally-recognized Tribe in San Diego County has partnered with a non-federally recognized Tribe that they have developed a close relationship with in the past to make Native American Graves Protection and Repatriation Act (NAGPRA) requests on their behalf (which only federally-recognized Tribes are able to do).

It may be possible for an intertribal consortium to extend and formalize these relationships to creatively facilitate gathering rights for non-recognized Tribes and other unaffiliated Tribal descendants. Admittedly, this alternative still presents a challenge to some unaffiliated Tribal descendants in areas where political tensions between recognized and non-recognized Tribes prevent relationships of reciprocity from developing.

Addressing the Capacity Limits of Both Tribal and Non-Tribal Governments

Tribal governments are often understaffed and overstretched -- without the necessary resources to do the work that is demanded of them. THPOs are often inundated with far more AB52 and SB18 tribal consultation requests than they as individuals -- sometimes as one-person-departments -- can possibly manage.



At the same time, state and municipal agencies often do not have enough manpower to effectively liaise or consult with the numerous Tribes in the state. Governor Brown established a system of Tribal policy advisors and liaisons to help him more effectively manage his relationships with the hundreds of federally-recognized and non-recognized California Tribes. While the position was likely created in part to mitigate the logistical challenges of coordinating facetime with each Tribe individually, Tribes seem to have less direct communication with the Governors' Office than they did before the system of Tribal policy advisors was established -- which is unsurprising given that part of the role of an "advisor" or a "liaison" is to more efficiently filter communication between the governor and individual Tribes.⁴⁴

Intertribal consortiums have been effective at helping multiple Tribes to pool resources and political clout to increase stewardship access to lands primarily by purchasing and holding land and conservation easements in situations where individual Tribes would not be able to do so (e.g. InterTribal Sinkyone Wilderness Council, Maidu Summit Consortium, and Kumeyaay Diegueno Land Conservancy). An intertribal consortium, as a body that is empowered by individual Tribes in a region to negotiate on their behalf, may help to peel away the "extra layers of bureaucracy" between Tribes and agency decision-makers that Tribes need to be engaging with more directly in order to more effectively

⁴⁴ Interview with Sherri Norris, Executive Director of California Indian Environmental Alliance.

advocate for their gathering rights. A consortium of Tribes may wield more political clout than individual Tribes during negotiations with state and municipal agencies.

Public agencies might find it easier to build trusting and productive relationships with individual Tribes that are unified under a consortium, since doing so is more efficient than dividing limited time and resources to engage with each Tribe individually. However, it must be emphasized that collaboration through intertribal consortiums are not meant to substitute government-to-government consultation. Rather, a consortium provides an additional mechanism that Tribes may utilize to work with public agencies in instances where it might be more politically effective to negotiate gathering rights as a group of Tribes rather than as individual Tribes.

- ★ In San Diego County, the Southern California Tribal Chairmen's Association (SCTCA) consult on a “council of governments” to “council of governments” basis with the San Diego Association of Governments (SANDAG) -- the region's primary public planning, transportation, and research agency -- on transportation issues impacting Tribes in the region. The SCTCA is a multi-service non-profit corporation established in 1972 by a consortium of 20 federally-recognized Indian tribes in Southern California. A board of directors consisting of tribal chairpersons from each of its member Tribes governs the SCTCA. The relationship between SANDAG and SCTCA is unique as SANDAG has done more than any other metropolitan planning organization to institutionalize a government-to-government relationship between a public agency and local Tribes.

Their relationship began in the early 2000s, when SANDAG sought for Tribes to play a larger role in developing regional transportation policy. SANDAG invited Tribes from the region to discuss their transportation issues at a policy development board meeting in 2002. However, nothing substantive came of the meeting. In the subsequent years, SANDAG developed a Tribal liaison policy and created the Tribal liaison position at the agency to better facilitate coordination with local Tribes on transportation policy. With the intention of facilitating a more effective consultation relationship with Tribes in the region, SANDAG invited the SCTCA to join as a member of the SANDAG Borders Committee -- which provides the agency with oversight for planning activities that impact the borders of the San Diego region, including adjacent counties and Mexico. In 2006, a summit was convened so that SCTCA members and SANDAG Borders Committee members could collaboratively develop the “council of governments” to “council of governments” framework (purpose, rules, protocols) that structures their working relationship today.⁴⁵

- ★ The InterTribal Sinkyone Wilderness Council (ISWC), established in 1986 as the first intertribal cultural land protection organization in the country, is composed of 10 federally-recognized California Tribes in Mendocino and Lake Counties. In 1997, ISWC established the first-ever InterTribal “Wilderness” on 3,845 acres of traditional Sinkyone territory acquired from The Trust for Public Land (TPL). Since 1992, a close partnership they have developed with the California

⁴⁵ Interview with Jane Clough, Senior Regional Planner for SANDAG Interagency Technical Working Group on Tribal Transportation Issues.

State Parks has allowed the Council to effectively implement multiple ambitious restoration projects within and beyond the Wilderness area.⁴⁶

- ★ Prior to their 2017 MOU with the Department of Parks and Recreation to co-steward Anderson Marsh State Park, the Koi Nation had successfully negotiated MOUs with both the City of Clearlake and Lake County to protect Native cultural resources. The Koi Nation convened seven Tribes in Lake County to discuss the possibility of formalizing a relationship with the County through an MOU to advance their cultural resource protection goals. It also proposed establishing a Tribal consortium whose mission would focus on protecting cultural assets from the development process. The consortium -- “Ancestors 1” -- would ultimately consist of three Tribes, including the Koi Nation, the Robinson Rancheria Pomo, and the Habematolel Pomo of Upper Lake. There had been previous standalone efforts by archeologists and other Tribal members to push Lake County to address the issue of cultural resource protection, but it was not until this organized effort that the Tribal community was able to formalize their interests with the County. The MOU between the Koi Nation and Lake County was signed by the Board of Supervisors in 2015.
- ★ In the Bay Area, the Sogorea Te’ Land Trust was established after the fallout from a 2011 struggle for the Chochenyo and Karkin Ohlone Tribes to protect an over 3,500-year-old ancestral village site in the City of Vallejo from being destroyed by the Greater Vallejo Recreation District to develop a new park. While the Tribes’ occupation of the land successfully halted development and resulted in the Vallejo City Council authorizing a first-of-its-kind cultural easement and settlement agreement for the land, the Council turned the land over to the Yolo County-based Yocha Dene Wintun Nation. The Yocha Dehe Wintun Nation had no connection to the struggle, but they were the nearest federally-recognized Tribe in the area, whereas the Chochenyo and Karkin Ohlone Tribes were non-recognized and were therefore unauthorized to hold land or easements.⁴⁷ Within months of the decision, Yocha Dehe officials made concessions to the Greater Vallejo Recreation District and allowed the site to be developed.

The Chochenyo and Karkin Ohlone Tribes established the Sogorea Te’ Land Trust in 2012 to prevent this situation from happening again. The trust aims to collectively buy back and own traditional lands and is working to establish a patchwork of small trust-owned plots of land across the East Bay. They have already acquired two small parcels of land. Through the trust, the Tribes have also been working with the City of Oakland to repatriate a three-fourths-acre portion of land in Joaquin Miller Park to the Tribe. The trust recently signed the Letter of Intent to repatriate the land. Once the land has been returned to the trust, they plan on petitioning the Oakland City Council to have a cultural easement placed over it, which the Mayor has already approved. The trust intends to leverage their current work with the City of Oakland to advocate for neighboring cities, like Berkeley, and Alameda County to support their stewardship goals.
- ★ Prior to 2017, some Tribes appear to have convened an informal “Tribal Committee” at Fish and Game Commission meetings where Tribes collectively discussed their stewardship interests and ideas for potential projects. This informal consortium of Tribes seems to have been a more

⁴⁶ Our Work. InterTribal Sinkyone Wilderness Council. Retrieved from: <<https://sinkyone.org/achievements>>.

⁴⁷ Under Internal Revenue Code (I.R.C.) section 170(h) and California Senate Bill 18

effective forum for Tribes to communicate about and collaborate on stewardship issues than the official Fish and Game Commission Tribal Committee that was established in 2017.

California Codes: Parks and Recreation & Fish and Game

Municipal Park Codes

California Tribes might look to recent developments within the East Bay Regional Park District as an encouraging precedent for local-agency policy development, whether municipal, county, or special district, the status of EBRPD. The two-county, 73-parkland EBRPD, which manages nearly 125,000 acres in Alameda and Contra Costa Counties, including over 1,250 miles of trails, is currently in the process of considering the establishment of a formal cultural materials gathering policy for the members of tribes within whose homelands its 73 parklands are located.⁴⁸ While Ordinance 38, EBRPD's Rules and Regulations, prohibits the general public from disturbing wildlife and damaging, injuring, collecting, or removing plants or trees, or parts thereof, as well as geological features, researchers can apply for a permit for conducting scientific research projects related to the same.⁴⁹ EBRPD's Research Permit process is likewise the agency's current means for assessing and providing access to cultural materials in its parklands by Ohlone, Bay Miwok, and Delta Yokuts peoples for purposes other than the District's cultural programming.

Beginning in late 2018, the agency established an internal committee to consider updates to its existing tribal cultural and historical resources policies and procedures, based on recommendations by Ortiz, in her capacity as Cultural Services Coordinator, including the possibility of the establishment of a dedicated gathering policy for local tribal peoples, akin to those already in place for the California Department of Parks and Recreation, the Bureau of Land Management, the U.S. Forest Service, and other agencies, based on existing models compiled by Ortiz. While consideration of a potential EBRPD gathering policy for Ohlone, Bay Miwok, and Delta Yokuts peoples is in its nascent stage of review, subject to indefinite delay due to the exigencies of the COVID-19 pandemic, before any potential policy is considered for adoption by the Park District's seven-member, elected Board of Directors, it will first be subject to tribal outreach and a public review and comment period.

The agency's Cultural Resources Coordinator has also recommended updates to Ordinance 38 in 2019 to further support the protection of cultural resources on District-managed lands. Previously isolated and unprotected gathering sites in the District are under increasing threat of degradation as more members of the general public disclose their locations and expose them to potential overharvesting, exploitation, and other abuse. There are otherwise no legal prohibitions against members of the general public from disclosing these locations.⁵⁰

⁴⁸ "About Us". East Bay Regional Park District. <https://www.ebparks.org/about/default.htm>

⁴⁹ "Rules and Regulations: Ordinance 38". East Bay Regional Park District. <https://www.ebparks.org/activities/ord38.htm>

* With the exception of waterfowl and fish, as permitted under Fish and Game law and licensing.

⁵⁰ Interview with Beverly Ortiz, former Cultural Resources Coordinator for East Bay Regional Park District.

However, not all municipalities will be as amenable to developing local Native gathering policies as the East Bay Regional Park District. While Tribal governments have the authority to negotiate with all levels of government to develop and amend codes, laws and regulations, their sovereignty is not always recognized, which is particularly true for California Tribes. That is why, speaking from a strategic standpoint, decriminalizing traditional gathering in municipal parks in California will require Tribes to anticipate how existing state wildlife and park codes and regulations will impact future traditional gathering activity in municipal parks. Because Public Resource and Fish and Game Codes set the baseline for what activity is permissible on park lands -- and municipal park codes must align with state codes -- working with municipal parks to develop codes to recognize gathering rights exclusively for Tribal communities may require amending relevant sections of Natural Resource code (Title 14) of the California Code of Regulations (CCR) in the future.



California Public Resource Code prohibits the general public from recreational foraging on public parks, with few exceptions.⁵¹ At the same time, the Fish and Game Code regulates the “take” of wildlife on all public lands, including public parks. Legally, state and municipal parks must adhere to these codes in the development and implementation of local codes and policies. However, agency staff -- management in particular -- can use their executive authority to interpret code narrowly or broadly, depending on what their legal counsel advise and/or their own priorities.

The Fish and Game Code is technically silent on subsistence rights for Tribes, suggesting that state agencies and individual parks have leeway to interpret this “silence” in the code as they see fit. Theoretically, municipal parks could develop local codes recognizing Tribal people’s rights to gather on park lands -- by designating “Tribal gathering” as a specific cultural and subsistence practice that is distinguished from “recreational foraging.” Tribes could advocate for their city and county park systems to create a separate category in their park codes that treat Tribal gathering as its own designated category of “cultural practice” -- which might then be distinguished from the foraging practices prohibited by state codes. However, if municipal parks refuse to acknowledge Tribal sovereignty and decide to view Tribal traditional gathering as no different from “recreational foraging,” then it is likely not possible to change local park codes without first amending relevant sections of the state Public Resource Code.

As a rebuttal, Tribes may be able to argue that there is state precedence for natural resource agencies creating regulatory exemptions for Tribal traditional gathering on public lands in regulations that otherwise prohibit members of the general public from foraging recreationally -- the 2010 tribal exemptions to the MLPA. It may be possible to use this precedent to advocate for the City Councils and/or County Board of Supervisors to create a similar exemption in local codes for Tribal traditional

⁵¹ General Provisions. California Department of Parks and Recreation. (Excerpts from California Code of Regulations). Retrieved from: <https://www.parks.ca.gov/?page_id=21301>.

gathering. How receptive county and city governments will be to this argument will vary with the political environment and the nature of the relationships Tribes have with their Board of Supervisors, City Council members, and the wider community.

However, given that the Fish and Game Commission have the ultimate decision-making power over the “take” of wildlife, plant life included, on all public lands in the state, California Tribes may still eventually be required to push for amendments or additional clarifying language in the Fish and Game Code to ensure that they can access their Tribal gathering rights on public parks in the long-term.

California Fish and Game Commission Tribal Committee

In the long-term, the CA Fish and Game Commission and Department of Fish and Wildlife will likely be the primary venue for Tribes to advocate for traditional gathering rights, since the agency is charged with developing and implementing wildlife policies and regulations on all public lands in California, including state and municipal parks. The Fish and Game Code is technically silent on subsistence rights for Tribes, even though, in practice, state agencies treat Tribes as they would any



other “stakeholder” -- in many instances, conflating Tribal gathering rights with recreational foraging. Specific language needs may need to be developed in the Code that acknowledges the inherent sovereignty rights of Tribes to exercise off-reservation “take” rights and mandates that state agencies operate in such a way that does not interfere or violate this right.

Specifically, the Fish and Game Commission Tribal Committee is the forum where Tribes will likely be advocating for changes to code and regulations that would support Tribal gathering rights in the future. However, some of the shortcomings of the Committee, involving its mandate and structure, would need to be resolved before it could serve as an effective forum for Tribes to advocate for their gathering rights. The Committee was established recently in 2017. However, the Fish and Game Commission’s facilitation of the Committee has resulted in sparse attendance and confusion about the Committee’s purpose for those who attend.

Some Tribal staff have expressed that the Tribal Committee, as a Fish and Game Commission Committee, has not been designed to be an effective forum for Tribes to voice their interests or to collaborate with the Commission to realize those interests. Some Tribal individuals question whose interests the Committee actually serves -- with some feeling that it is a body that merely allows the Commission to co-opt Tribal voices in Tribal resource management issues and that it may actually serve

as a "filter" to prevent issues raised by Tribal representatives from actually reaching the Commission. According to individuals that know of or have attended Tribal Committee meetings, the meeting agendas are not transparently or collaboratively developed and there is no time allotted for Tribal representatives to actually raise and discuss their interests.

The issues raised by some Tribal staff suggest that the Tribal Committee needs to develop a charter that explicitly outlines the Tribal Committee's mandate before it can serve as an effective forum to advance tribal stewardship activities on public lands. The mandate should outline the Tribal Committee's purpose, structure, and rules of engagement, including communication protocols between Fish and Game Commission staff and Committee representatives, and other guiding procedures about developing meeting agendas and collaboration on proposed projects and policy suggestions.

Statewide Tribal Gathering Permit Regulation

The Limits of Tribal Gathering Policies



Some individuals have expressed that the challenges to Tribal traditional gathering are not necessarily a policy problem but an executive and legislative problem. All state agency staff receive their directives from state's executive offices or from state Congress. Consequently, establishing concrete gathering rights in the long-term will likely require executive and/or congressional action.

Policies can be and are written to interpret laws and the regulations that are meant to implement laws. Policies on tribal gathering can be established and/or modified to enforce and implement laws guaranteeing Tribal traditional gathering rights. However, due to California's Tribal treaty history and termination policies, there is no federal or state law guaranteeing all California Tribes their right to hunt, fish, and gather -- even though some California Tribes (including the executive order Tribes) have been able to develop creative workarounds that enable them to gather on public lands anyway. Relying on traditional gathering policies will only take California Tribes so far in advancing concrete traditional gathering rights, even though doing so may serve as a reasonable immediate-term strategy.

Some Tribal individuals have proposed that a specific statewide tribal gathering permitting regulation will be necessary to secure gathering rights for California Tribes in the long-term. California's unique Tribal treaty history and its current political landscape makes state-level regulation a key pressure point for validating and expanding gathering rights in the long-term. Though federal policy is technically "supreme law of the land," in practice, California has generally prioritized its own natural resource management agenda over federal priorities (at least in forest management) -- which is

consistent with its history and reputation, for better and for worse, of going its own way and generally “leading the pack” in policy change in many policy areas, including environmental policy.

At present there are several policies that recognize the rights of Tribal people to gather on public lands in California. They include (but might not be limited to) policies under the California State Parks, CalTrans, and Region 5 of the Bureau of Land Management and Forest Service. However, these policies serve more as guidelines than enforceable rights. Policies tend to be written with vague language and are more suited for aspirational directive purposes - - oftentimes lacking language that outlines any enforcement mechanisms. Governor Brown’s 2011 executive order on tribal consultation serves as more of a “mission statement” that encourages state agencies to consult with California Tribes than a template for how to actually implement tribal consultation on the ground.

Eventually, Tribes will need to pursue regulations, and possibly amendments to state Code, that will definitively codify tribal gathering rights in state law. However the regulations and codes must be developed to ensure that the state is merely recognizing -- and therefore making enforceable -- long held inherent Tribal rights and not conferring to itself regulatory power over Tribal gathering rights. Acknowledgement of tribal sovereignty needs to be incorporated into the language of such a regulation to ensure that it would be correctly interpreted as memorializing long-standing gathering rights and not as the state creating new rights for Tribes.



A Defensive Approach Against Future Threats to Gathering Rights

Aside from policies restricting traditional gathering, climate change and the growing “health and wellness” industry pose the greatest threats to traditional gathering rights in California. Even though California Tribes technically have reserved rights to gather -- rights that they never ceded -- the state has and likely will continue to pass legislation that interferes with their gathering rights.

As a state that generally takes the lead in pushing for progressive environmental policies, California seems poised to pass more conservation regulations, especially as the climate crisis worsens. While some of these regulations will align with Tribal environmental stewardship goals, unfortunately, others may lead to further restrictions to gathering rights for California Tribes. If California Tribes do not preemptively develop regulations to protect their gathering rights, the state will likely end up defining these rights for California Tribes through future state climate and conservation regulations -- as it did during the planning phase of the MLPA, prior to the passage of tribal exemptions in 2010.



Overharvesting -- particularly by non-Native and commercial harvesters -- poses a significant threat to the health of plant populations. As the “clean living” lifestyle grows in popularity, Tribal gatherers will need to compete with non-Native and commercial harvesters that seek to consume and/or commodify traditional food and medicine plants. This is already happening in California, with white sage, but will likely eventually impact many other plants that only Tribal people gather in the present. An increasing number of municipalities in other states with large metropolitan populations -- like Portland and Seattle -- have already passed policies to allow foraging of wild foods in public parks and other public areas.⁵² Additionally, recent federal legislation, such as The Special Forest Products Program Reauthorization Act of 2019, has expanded commercial harvesting rights. The Act expands a pilot program allowing the general public to harvest

certain goods from public land for both personal and commercial purposes.

As a result, some individuals assert that Tribes need to collectively develop Tribal “standards of practice” for traditional foods and medicines, which they believe may be the only way for Tribes to preserve their gathering rights in the future: *“If we want to push the state to stop people from environmental destruction through overharvesting and to open up and honor the historical relationship Tribes had with the land, it is imperative that the Tribal community discusses what historical management practices look like and figure out how to translate that into a modern world, so the state doesn’t start making those rules up and pushing them on Tribes.”*⁵³

As much as Tribes have been able to accomplish to protect cultural resources over the years, future efforts will be more enforceable with the backing and support of other governments -- (1) given the limits of Tribal jurisdiction over non-Tribal actors on non-Tribal lands and (2) in the face of seemingly borderless threats to these resources, like climate change and hyper-commodification. Tribes need a formal mechanism to ensure that the state will support its efforts to hold people -- and commercial businesses in the future -- accountable when traditional food and medicine plants are abused.

⁵² Food policy and zoning in Portland. City of Portland, Oregon. Retrieved from: <https://beta.portland.gov/bps/food-policy-and-zoning-portland>.

Shackleton, C., Hurley, P., Dahlberg, A, Emery, M., and Nagendra, H. (2017). Urban foraging: a ubiquitous human practice overlooked by urban planners, policy, and research. *Sustainability* 9(10), 1884. 18 p. Retrieved from: <https://doi.org/10.3390/su9101884>

⁵³ Interview with Valerie Segrest, Regional Director of the Native Food and Knowledge Systems Native American Agriculture Fund.

Some might argue that additional regulation for traditional medicine and food plants is unnecessary, given that state and national park agencies and the USFS have already been tasked with protecting the natural resources within their boundaries. However, these agencies are incredibly understaffed and perpetually underfunded, making enforcement of the existing resource protection regulations impossible. Moreover, the existing natural resource regulations they are mandated to enforce are often not informed by Tribal needs or traditional ecological knowledge, and consequently, these regulations have -- and will likely continue to -- fall short as a means to protect traditional plant foods and medicines.

Tribes will also need to evaluate the risk that new regulations may pose to existing “arrangements” (e.g. access granted via relationships) that allow Tribal people to gather against the protections that such regulations might offer to gatherers and plant populations. For example, an old USFS Tribal gathering permit system arose in the 1970s in response to the overharvesting of Matsutake mushrooms in



Northwestern California -- important food sources for the Karuk, Pomo, and other Tribes in the area. This problem prompted guidance from the USFS for how they should manage the harvest of these resources. The Karuk filed a lawsuit against the USFS to prevent the agency from issuing more commercial harvesting permits until they could establish a system to protect Tribal subsistence gatherers. Ironically, the USFS responded by proposing a Tribal gathering permit system that was meant to regulate the behavior of the non-Tribal and commercial harvesters, but was actually felt to be more restrictive of Tribal subsistence gathering (though the system is likely defunct as of the 2006 passage of the Region 5 BLM and USFS Tribal Gathering Policy).⁵⁴

Some public agencies -- like CalTrans and the Native American Heritage Commission (NAHC) -- have already developed systems to work with Tribes to protect cultural and biological resources that allow Tribes to share only “need to know” information and avoid disclosing precise locations or details about particular sites. CalTrans has worked with Tribes to protect plant gathering sites and archeologically-sensitive areas by designating them Environmentally Sensitive Areas (ESAs) that are managed through a “rubric” system that grades ESAs on a map by level of sensitivity. ESAs are marked on databases and plans to inform CalTrans personnel, particularly maintenance and construction staff, that biological or cultural staff must be consulted prior to engaging in any activities in these sensitive areas. Meanwhile, the NAHC employs a similar system to work with all state public agencies to ensure

⁵⁴ Interview with Leaf Hillman (Karuk).

they comply with AB52 and SB18 in the course of planning land use and development projects. These systems of practice may serve as models for how Tribes might work with the state to protect “sensitive biological resources,” like traditional plant foods and medicines.

California Tribes might even consider looking to the strategy that the Tolowa Dee-Ni’ have developed as a model for how to begin modernizing and translating traditional protections for gathering resources into a state-level strategy. The Tolowa Dee-Ni’ have created internal Tribal Code (Harvest Title) to protect specific wildlife species, which their Natural Resources department is now working with public agencies to co-monitor and protect. However, they are using an existing regulation -- the MLPA -- to facilitate this strategy. Specifically, they are working with the Department of Fish and Wildlife to monitor the impact of the MLPA on MPAs in their area, but with an eye to the key species that they have identified for protection through the Harvest Title in their Tribal Code.

In the long-term, other California Tribes could replicate this strategy by advocating for the state



to amend or even add monitoring requirements on existing wildlife and water quality regulations to encourage/require co-monitoring with local Tribes. This strategy relies on existing regulations, like the MLPA, which might leave out species not currently monitored under existing regulations. However, there may be opportunities for Tribes to co-monitor other resources utilizing existing natural resource policies -- for example, the “Tribal beneficial use”

categories that Tribes are empowered to create for inclusion in California Water Board water quality control plans to protect species that they rely on for subsistence from water pollution. Tribes may be able to advocate to their regional Water Board for Tribal co-monitoring of the “Tribal beneficial use” species included in water quality control plans. Tribes might also consider advocating for parks to co-monitor with Tribes the resources in the parks that are being protected by gathering permits, given that this is not being done at the present -- at least not widely.

This approach may allow Tribes to work with local offices within state natural resource agencies to protect specific resources regionally and discreetly and to utilize existing state regulatory infrastructure to achieve their diverse resource protection goals. It may also allow California Tribes to avoid concerns about the state conferring regulatory powers over Tribal natural resource management by developing new state level regulations to protect traditional plant resources.

However, this alternative would require that individual Tribes coordinate between their own family groups to identify and develop a list of species to designate for protection and, ideally, develop Tribal Code outlining the Tribe’s intent to protect these species. Moreover, given some of the external factors that impact species distribution across territories that were discussed earlier, like climate

change, coordination might be required on a regional level between Tribes (through a consortium or council of Tribes).

[Also see the “*Evaluating the Impact of Permits on ‘Conservation Necessity’ Goals*” subsection above.]

Cultural Easements and Cultural Preserves

Cultural Easements

Conservation easements have been successfully used by California Tribes to protect sacred sites and, in some instances, to restore traditional harvesting practices on certain lands. In California, all Tribes listed on the California Native American Heritage Commission’s “registry” of California Tribes (federally-recognized and otherwise) are authorized to hold easements under SB18. Conservation easements are commonly used to restrict certain uses on specific pieces of land in order to protect its natural resources. However, it is possible to develop cultural easements -- a subcategory of conservation easements which places a special emphasis on protecting cultural resources -- on municipal public lands as a means to secure access to those lands for traditional gathering purposes.

- ★ The Chochenyo and Karkin Ohlone Tribes are seeking to place a cultural easement on a three-quarter-acre portion of land in Joaquin Miller Park -- a public park operated by the City of Oakland -- after the City formally returns the land to them (by the end of 2021).

In 2011, the Vallejo City Council authorized a first-of-its-kind cultural easement and settlement agreement to be placed over an old Ohlone village site. The Council turned the land and easement over to the Yolo County-based Yocha Dehe Wintun Nation, since they were the nearest federally-recognized Tribe in the area. While the Chochenyo and Karkin Ohlone Tribes were unable to hold the easement themselves, as non-recognized Tribes, they realized that the land trust they later developed -- the Sogorea Te’ Land Trust -- could use cultural easements to secure stewardship rights on other municipal public lands moving forward.

- ★ The Amah Mutsun worked with the Midpeninsula Regional Open Space District (MOSD) to develop a cultural easement over 36 acres on Mount Umunhum in the District’s Sierra Azul Open Space Preserve in 2017. Under the easement, the Tribe maintains the right to steward the land to advise the District and the public on Native American history and culture on Mount Umunhum and surrounding areas.

Cultural Preserves

It may also be possible for Tribes to advocate for specific parks to designate certain areas within the park containing gathering sites as Cultural Preserves. Cultural Preserves “consist of distinct non-marine areas of outstanding cultural interest established within the boundaries of other state park system units for the purpose of protecting such features as sites, buildings, or zones which represent

significant places or events in the flow of human experience in California."⁵⁵ Cultural Preserves are designated in General Plans by the State Parks Strategic Planning and Recreation Services Division and must be approved by State Park Commissioners.

In 2008, as part of its General Plan update, Año Nuevo State Park established the 220-acre Quiroste Valley Cultural Preserve in partnership with the Amah Mutsun. The efforts that led to this designation began in 2004 with a collaboration between the Tribe and archeologists from the State Parks's Santa Cruz District and UC Berkeley's archeology doctorate program to research and re-introduce pre-contact traditional resource and environmental management practices into an area within the park. Park General Plan

updates provide opportunities for communities to insert language designating certain areas within the park for special use. Because the Tribe and the archeologists had already completed a substantial amount of archeological and historical ecological research that identified how historic Native stewardship impacted Quiroste Valley, they were well-positioned to make the



case that the area was of "outstanding cultural interest" and that their desire to continue conducting Tribal ecological restoration activities in this area was consistent with historic uses on the land. After a campaign to convince the general public and the State Parks Board Commissioners that there was value in establishing a preserve that would be co-stewarded with the Amah Mutsun, the General Plan and the establishment of the Quiroste Valley Cultural Preserve was approved in 2009. The co-stewardship partnership between the park and the Tribe was further formalized through an MOU, which enables the Amah Mutsun to relearn and revive Tribal stewardship practices on site as part of the efforts to restore and maintain the preserve.

State Parks has designated a very small number of Cultural Preserves, with some having been established to protect Native cultural sites. However, it is important to note that Cultural Preserves are generally established to preserve strictly "cultural resources." The model that was developed by Año Nuevo State Park and the Amah Mutsun is likely the first of its kind in the state to allow active stewardship on a preserve in order to protect biological "cultural resources." However, the Quiroste Valley Cultural Preserve may serve as an additional or alternative model for how Tribes might work more formally with State Parks on environmental co-management of specific areas within a park. It may also be an appealing option for Tribes, given that establishing Cultural Preserves is more a political undertaking than a financial one, given that there are no financial costs for State Parks to designate them. Moreover, this option may provide Tribes access to large swaths of park land given that, when

⁵⁵ Cultural Preserves in California State Parks. California Department of Parks and Recreation. Retrieved from: <https://www.parks.ca.gov/?page_id=23750>.

State Parks has established Cultural Preserves with Tribes in the past, it has done so with the aim of including large areas of landscape surrounding a particular cultural site.⁵⁶

Deconstructing Western Natural Resource Management Paradigms

“Educate and Infiltrate”: Public Education and Advocacy



Public education is key to actualizing existing Tribal traditional gathering policy on the ground and to neutralizing political blowback from the general public against proposed policy changes that enforce and advance Tribal traditional gathering rights. Without public awareness of Tribal rights to gather, these rights cannot be effectively enforced. Having policy frameworks and laws enshrining gathering rights is imperative, but without public education to ensure that the wider public is both aware of the laws and the reasons they are

necessary, laws often have “no teeth.” Moreover, the general public will continue to push back against Tribal stewardship goals -- and the philosophies supporting them -- that they do not fully understand and, therefore, for which they will not support and perhaps even actively resist.

Those who oppose Tribal gathering on public lands commonly assume that it will lead to the “pillaging” of natural resources. Education efforts should seek to inform people about the sustainability objectives and outcomes inherent to Tribal traditional gathering, as well as how to respectfully and productively engage with Tribal communities about traditional gathering. Ideally, education should target four key groups -- (1) the general public, (2) state and municipal park agency staff, (3) staff at mainstream environmental groups, and (4) Tribal communities.

Native cultural educators often initiate relationships with organizations -- like parks, museums, or conservancies -- that will become key institutions in their efforts to expand the reach of Tribal stewardship. Such instances include the Autry Museum, LAC Natural History Museum, and the Theodore Payne Foundation -- which have developed relationships with their local Tribal communities and have collaborated with Tribal practitioners to develop and implement programs that educate the wider community about Tribal stewardship.

⁵⁶ Interview with John Foster (California State Parks).

State and Municipal Agency Staff

Insufficient cultural competence about Native stewardship and history has impacted both the direction of executive level policy development at the State Parks Department as well as policy enforcement on the ground.

Some public lands agencies have become better acquainted with Tribal stewardship practices through their collaborations with Tribes on forestry and other habitat restoration projects. Some Northern California Tribes have been able to educate the USFS and California Department of Fish and Wildlife about the positive effects prescribed burning can have on forest ecosystems and certain endangered species through their collaborations on forestry projects. However, these learning opportunities are limited to specific parks and regions of forest land where these Tribal-state/Tribal-federal collaborations have taken or are taking place.

While agencies should take responsibility for properly training all in their executive and field offices about how to support and engage with Tribal people in their service areas, the reality is that most agencies have not developed the internal infrastructure to ensure that its staff are informed about matters relating to Tribes on public lands.

The State Parks Department is currently in the process of redesigning its longstanding Tribal gathering permit policy -- Native California Indian Gathering Permits (DPR 864). However, there is an internal conflict between the Department's Cultural Resources and Natural Resources Divisions that must be reconciled before a cohesive, effective policy that will support Native people's gathering



rights can be written. Traditionally, the Natural Resources Division has been given more authority in decision-making and policy development than the Cultural Resources Division. Tribal gathering permits are typically approved by the Environmental Scientists in the Natural Resources Division and District Superintendents. In the past, this was due in part to the fact that there were few cultural resource specialists in the field when the policy was first established, resulting in the application approval being relegated to natural resource specialists -- who at the time were generally not inclined to approve applications. Though State Parks staff at headquarters advanced the policy, it could not require field offices to consistently implement the policy on the ground. Operational authority of the parks is vested in district supervisors and line officers -- most of whom, at the time, opposed the policy.

Very few Environmental Scientists and badged District Superintendents have anthropological/archaeological training, because it is not a requirement for their positions. Such training is not necessary to embrace a gathering policy, but lack of such training, and the cultural sensitivity that

it provides, has at times contributed to park staff dismissing the value of such a policy. However, this situation has been changing as more staff in the Cultural Resources Division, like Tribal Liaisons, are being allocated in the district field offices.⁵⁷

Even Tribal traditional gathering policies have been developed at the executive level at natural resources agencies, like the Region 5 BLM and USFS Traditional Gathering Policy, are implemented very unevenly on the ground. In the case of the Region 5 BLM and USFS Traditional Gathering Policy, this disconnect can be explained in part by the significant staff reorganization that was occurring at the USFS and BLM as the policy was first being negotiated. In the immediate aftermath of the policy's passage, the USFS created a staff position (that was filled by a Native person) that focused exclusively on traveling to all USFS field offices in California to educate line officers about the new Traditional Gathering Policy -- an endeavor that took three years.⁵⁸ However, likely because of the high level of staff turnover at these agencies, many Tribal people still report encountering rangers who are unaware of the policy. It took over a decade after the passage of Region 5 BLM and USFS Traditional Gathering Policy, for the BLM to update the agency handbook to include information about the policy. The Cleveland National Forest has only just initiated a revision of their agency manual to include the policy.⁵⁹

Similarly, the State Parks Department has not provided its field office staff with sufficient training to engage with Native people in the parks. The Department's ranger cadet training curriculum devotes only 1.5 days of its 26 week training to cultural resources, with the majority of the training focusing on law enforcement in a manner similar to police academy or military boot camp training.⁶⁰

Tribes that are able to gather in parks due to good relationships with specific park or forest



rangers or supervisors risk losing access due to a culture of high staff turnover at these agencies, which then requires them to continually expend time and labor to re-educate new staff. The access that the Chochenyo and Karkin Ohlone Tribes have to Coyote Hills Regional Park in Oakland has continued even after their original champion left the position, because she went above and beyond what was required of her to ensure that the educational programming she first developed

would stay intact. These measures included staying on to train her replacement and educating her replacement about the relationships she cultivated.

⁵⁷ Interviews with Edward "Breck" Parkman (California State Parks) and John Foster (California State Parks).

⁵⁸ Interview with Merv George, Jr., Supervisor for the Rogue River Siskiyou National Forest.

⁵⁹ Interview with Diania Caudell (CIBA).

⁶⁰ Parkman, E.B. (2007). Science Notes Number 68.

However, this thoughtful transition process is more often the exception than the norm, which is why Tribes should consider advocating for state and municipal parks to include a mandated training curriculum for public natural resources agency staff about all relevant park policies related to Tribes and Tribal stewardship of public lands. This training can be integrated into existing staff orientation procedures, agency manuals, and employee handbooks. The training should include an overview of Native stewardship (history, philosophy, science, practices), traditional gathering practices, history of the Tribes with ancestral territory within park boundaries, policies that support tribal sovereignty rights to gather on parks, and procedures for engaging with Tribal communities in the park. This curriculum should be designed, if not strongly informed, by local Tribes.

Tribes might consider looking to CalTrans as a starting point for how agency manuals and handbooks can be revised to include better guiding procedures for how agency staff can support Native gathering. CalTrans's Cultural Studies Office maintains a handbook -- first written in 1988 -- that outlines policies and procedures for conducting archaeological and historical studies, including consultation with Native people on cultural resources, and which continues to be regularly revised. The earliest versions of the handbook recognized and addressed the importance of providing Native people access to areas of cultural importance, including plant gathering locations. All subsequent versions of the handbook have expanded on the plant gathering permit process for Native people within the right-of-way, as well as the roles of maintenance and landscape staff in facilitating access and care of gathering locations. CalTrans's 2013 Encroachment Permit Manual revision also includes specific information about obtaining a "Plant Gathering Permit."⁶¹

Some individuals have proposed creating a brief training video to document the history of the work and relationships that public agencies have developed with local Tribes that would serve as supporting onboarding material for new staff members at both the public agencies and Tribal departments.

The Koi Nation has recently produced a documentary about the protection of cultural resources that it plans to (and has received funding to) distribute to every municipality in the state as a public service announcement about the existing state laws protecting Native cultural resources.⁶² This may serve as both an opportunity for Tribes to expand the conversation around "Native cultural resources" to include "traditional gathering" and as a model for how to deliver a mass-scale a training curriculum to educate park staff and municipal decision-makers about what traditional gathering is, what policies exist to support it, and what Tribal communities need from them in order to protect their gathering rights.

General Public

Until the public becomes accustomed to seeing Tribal people gathering on public lands regularly, it will always seem like a strange and threatening practice to them. One of the most direct methods of educating the general public about traditional gathering is to simply gather in view of the public.

⁶¹ E-mails with staff from the CalTrans Cultural Studies Office and Division of Transportation Planning: Jodi Brown, Sarah Allred, Lonora Graves, and Tina Biorn.

⁶² Interview with Dino Beltran (Koi Nation).

However, this option is often not safe for Tribal people in areas with tense or non-existent relationships between the Tribal and non-Tribal communities. Tribal cultural centers should consider hosting public events to demonstrate these practices so that gatherers can educate the general public about Tribal stewardship in a safe and controlled setting (where they are less likely to expose their gathering sites or themselves to potential abuse).

- ★ The Amah Mutsun -- who have made public education about their stewardship practices one of the pillars of their work -- often invite the public to observe and learn about some of their practices at some of their less sensitive gathering sites, including scattering seeds for the next year's crops of plants, leaving some plants for birds and other animals, and the principle of reciprocity in general.
- ★ For over a decade, Cheryl Bryce, of the Songhees/Lekwungen Nation, has been coordinating a public education program she developed called the "Community Tool Shed" which aims to build a network of 'community tool sheds' where participants can access the appropriate equipment to assist with the restoration of Kwetlal food systems. The program invites Indigenous people and allies to work together to reinstate the Kwetlal food system by helping to create corridors between "wild" food systems that have been fragmented by urban development. Bryce also educates students about traditional gathering and Native stewardship in the local public schools.

Understandably, Tribal communities will need to decide for themselves how to educate the public about their practices while keeping a certain amount of knowledge about their gathering sites, plants, gathering methods, and ceremonies private. But Tribes must weigh their privacy concerns with their need to keep their right to practice "visible" -- to ensure that people witness them publicly exercising and affirming their right to gather on public lands.

Public education must also focus on teaching the public about why Tribes are not, and therefore should not be treated like, any other "stakeholder" in natural resource management decisions, given their historical and/or legal status as sovereign nations. Tribal communities are often treated as "interest groups" in outreach processes, such as when public parks are developing or revising their park management plans. However, their status as sovereign nations (recognized or otherwise) should entitle them to certain "exemptions" not available to the general public pertaining to natural resource "take" rules -- as in the case of the tribal exemptions to the MLPA. These exemptions are viewed in some cases by the general public as discriminatory, because they believe these exemptions privilege Native Americans over other race and ethnic groups, when the true distinction between those who can and cannot access resources under these exemptions is a political one -- the rights of a member of a sovereign Tribal nation (a distinct political entity) versus the rights of a U.S. resident.

Moreover, education efforts will also need to diplomatically clarify that current conservation issues -- extreme wildfires, species declines -- are a result of federal resource management policy -- as

opposed to Tribal gathering practices.⁶³ These efforts will need to underscore that, ironically, Tribes' gathering rights have been restricted and Tribes continue to be held to disproportionate account for these outcomes, even though their natural resource management practices are not responsible for them.

Staff at Mainstream Environmental Organizations

In the past, mainstream environmental organizations -- misinformed by Western-centric assumptions about the threat that TEK practices pose to their conservation goals -- have been a key opposition group to efforts by Tribal communities to maintain their traditional foodways. However, these groups can and have been key allies in Tribal efforts to advocate for their stewardship rights.

In Mendocino County, the Intertribal Sinkyone Wilderness Council (ISWC) was given 164 acres of land owned by Save the Redwood League in 2012. The parcel of land served as an important cultural site that the ISWC had been attempting to reacquire for 15 years from Save the Redwood League before they finally relented and returned the land to the ISWC. The ISWC had to overcome the initial doubts Save the Redwood League had about whether it could properly care for the land -- a doubt which may have diminished over time as it saw the ISWC successfully pursuing and managing various land stewardship projects with State Parks. The Cahto tribe at Laytonville Rancheria has a cooperative/general service agreement with the Redwood Forest Foundation (RFFI), a local nonprofit holding a conservation easement over portions of the Usal Redwood Forest.



The Trust for Public Land has worked with a number of Tribes on projects to support Tribal stewardship on land conservation projects that they facilitate (including the Kashia Band of Pomo Indians). Similarly, the Nature Conservancy has worked with Tribes nationwide -- including the Karuk -- to restore prescribed burning to landscape management.

The Amah Mutsun have been particularly savvy about developing a consistent message about their stewardship paradigm that has resonated with the environmental sustainability and conservation values of other land management organizations, which has in turn helped them to secure partnerships and funding from the mainstream environmental community. Their educational efforts have required painstaking efforts to answer sometimes adversarial inquiries about their intentions by state agencies

⁶³ LeBeau, M. (1998). Federal Land Management Agencies and California Indians: A Proposal to Protect Native Plant Species. *Environs: Environmental Law and Policy* 21(2): 27-48. Retrieved from: <https://environs.law.ucdavis.edu/volumes/21/2/articles/lebeau.pdf>.

and environmental organizations. However, their efforts to utilize these challenges as teaching opportunities has resulted in a robust network of allies that support and fund their efforts. In particular, their efforts to educate others about their work on the Quiroste Valley Cultural Preserve with Año Nuevo State Park has helped them secure allies like the Sempervirens Fund, which has entered into a co-management agreement with the Amah Mutsun for an 88-acre parcel of land, adjacent to the preserve, that the fund owns. The Sempervirens Fund also funds a staff position at the Amah Mutsun Land Trust to assist the trust's efforts to secure more grant funding.

Moreover, any advocacy efforts to increase gathering and general stewardship access to public



lands that can be tied to fire management goals is likely to appeal to and win the favor of both land conservation organizations and public lands agencies, given that California is currently consumed with addressing the threat of extreme wildfires (as was the case for the Amah Mutsun and the Karuk).

Educational opportunities for this group may include summits, public workshops and demonstrations about how TEK --

including Tribal gathering practices -- can support sustainability and conservation goals (which may also be useful for staff at state and municipal natural resource management agencies). Workshops should include cultural competency training for how to respectfully engage and work with local Tribes to support traditional gathering.

Tribal Communities

Though various policies and procedures that support traditional Tribal gathering on public lands exist, knowledge of them is uneven -- even among Tribal staff whose work involves regularly researching and navigating policies related to environmental stewardship and cultural resource preservation. It is therefore unreasonable to expect members of the general Tribal community to have the time and resources to complete the sometimes extensive research necessary to develop a working understanding of the policies that exist to support their traditional gathering rights. Public agencies that develop these policies do not always make information about them accessible.

Tribes -- and specifically Tribal cultural centers -- might consider developing a "Know Your Gathering Rights" pocket cheat sheet/pamphlet that aggregates all relevant Tribal gathering agencies overseeing lands where their gathering sites are located that allow them to gather with and/or without permits. The pocket cheat sheet could be modeled after the "Know Your Rights" pocket brochures that

have been developed over the years to ensure that activists and members of marginalized communities know how to engage with law enforcement when they are confronted by them.

[Also see “*Regional Atlas for Tribal Gathering*” above.]

Legitimizing Tribal Science Through Institutions

Policies that discourage, limit, or prohibit gathering are generally implemented for “conservation necessity” purposes. Tribal traditional gathering is sometimes categorized as “criminal” activity, because it is considered an abuse of the natural resources in public green and open spaces. In the immediate term, Tribal communities can push individual parks to develop policies to support traditional gathering. In the long term, decriminalizing Tribal cultural practices at the public agency level will require reforming the general public’s understanding of sustainable conservation and ecosystem management. At present, Eurocentric natural resource management paradigms dictate the mandates of natural resources agencies -- one of the main obstacles to Tribes practicing their gathering rights on public lands.

Tribal environmental program staff have often not been considered environmental experts by western authorities. Tribal cultural and biological resource specialists struggled to obtain appointments during the development of the scientific advisory committees for the planning phase of the California Marine Life Protection Act, since they were not thought of as “science experts” in their own right.

At present, there seems to be no “common language” for Tribal communities to communicate to non-Tribal communities (both the general public and natural resource agency staff) the technical and philosophical aspects of Native environmental stewardship. In this scenario, “common language” means ‘commonly accepted discourse based on a shared worldview.’ One of the most challenging aspects of negotiating agreements for stewardship access in technical documents is that “gather” is often thought of in narrow terms. Tribal communities have a more expansive conception of “gather”



that is often more narrowly defined in agreements (including conservation easements). “Gathering” has many implications involving the active, continual environmental management that occurs naturally through the “gathering” process. The act of gathering is a form of cultivation that supports the healthy growth and balance of native plant species in an ecosystem. The general public does not realize that “gathering” encompasses an ongoing, wild agroscaoping of the land, which can lead to confusion and apprehension during formal discussion when Tribes, public agencies, and landowners convene to negotiate “gathering rights” in technical documents.

Due to this cultural disconnect about what the term “gather” means, Tribes have not been able to practice tribal stewardship on some public lands and even on lands they own in-fee (that must be managed in compliance with federal, state, and municipal laws). The public agencies and mainstream conservation organizations (like land trusts) that often develop access agreements with Tribes or help them to acquire or place easements on lands operate under policies that only permit passive “leave it alone” land management practices that are contrary to the active “gathering” practices of tribal stewardship. Current state and municipal park and wildlife codes and regulations are informed by the notion that sustainable land management is most effectively achieved by “leaving it alone,” due to compartmentalized thinking about the way ecosystems and the people in them function. There needs to be a recognition of native people as active and necessary to the creation and maintenance of healthy ecosystems.

Tribes can work to develop a “common language” necessary for public natural resource agencies, scientific institutions that inform agency practices, and the general public to recognize TEK as science in its own right. This will require an examination of cultural protocols and the creation of language that upholds cultural integrity. It will also involve educating the general public and “experts” of their compartmentalized understanding of “gathering” as not just a “cultural” practice but simultaneously an “ecological” and “food system” practice. It may be possible for this “common language” to be developed through collaborative science. To that end, Universities and research institutions can support these efforts through culturally sustaining pedagogies and forming collaborative partnerships with tribes help grow the body of “formal” science on Tribal stewardship (peer-reviewed science recognized by the academy).

- ★ In British Columbia, the Songhees (Lekwungen) Nation’s government is supporting their efforts to expand their marine harvesting rights and to protect marine species through formalized partnerships with local universities. They have formalized an MOU with local universities (like the [University of Victoria](#)) so that Masters students can offer formal science training to members of the Songhees Nation as they collaborate to develop Marine Use Plans, which are used to guide marine conservation planning. The Songhees Nation intends for this partnership to help prepare some of their youth to become the next generation of Tribal scientists, who will be better equipped to advocate for the Nation’s harvesting rights and protection of harvested marine species.
- ★ Schools in the University of California system have partnered with local Tribes to advance research about the use of TEK practices for land management. The Karuk have been working with UC Berkeley to evaluate the impact that the restoration of prescribed burning has on forestland and their overall food system through the Karuk-UC Berkeley Collaborative. Meanwhile, the Amah Mutsun have partnered with UC Santa Cruz Arboretum & Botanic Garden and developed an Amah Mutsun Relearning Garden to assist with ecological restoration efforts at the Quiroste Valley Cultural Preserve. The researchers at the arboretum are helping the Tribe to identify, plant, and manage traditional food, medicine, basketry and other types of plants within the territory and to support management plans that enhance and restore those plant species.

- ★ In the early 2000s, the San Luis Rey Band of Mission Indians, in San Diego County, worked with California State University San Marcos on a documentary project called “Indian Rock Native Garden Collaboration.” The Tribe initiated the partnership with the university to raise more awareness about the obstacles that the Tribe and other Tribal communities face when attempting to practice traditional gathering (restrictions to gathering on lands). The project documents the contemporary and past indigenous practices of Luiseño Indians in San Diego.

At present, the body of science validating TEK’s environmental impact is fledgling. However, there is an increasing number of studies completed by Masters and doctorate students focusing specifically on the impacts that applications of TEK have on the environment.⁶⁴ While Tribal communities have always understood the validity of their TEK practices as a land management regime, Tribes need to grow the body of “western science” that formally memorializes and records TEK’s past and present achievements in sustainable land and wildlife management. It will be more important than ever for Tribal communities to aggressively grow the body of “formal” science recognizing TEK as a strategy for achieving sustainable natural resource management as “evidence-based” policymaking becomes the new gold standard for how natural resource agencies in California states develop policies and regulations that will impact traditional gathering. These studies might also include scientific evaluations of how effectively policies that limit traditional gathering serve conservation goals (e.g. impact on native plant health and populations).

[Also see the “*Public Education and Advocacy: Staff at Natural Resources Agency*” section above.]

TYA Cultural Gathering Rights Strategies

Goals Increasing education and access to traditional foods and cultural resources in public spaces for tribal community members

Systemic change ideas aimed at increasing education and access to traditional resources, cultural gathering revitalization

Policy and Systems Changes

- ★ Public Education
- ★ Inherent Sovereignty
- ★ Unratified Treaties, Morill Land Grant Act, Rancheria Act
- ★ Lack of Land and Contemporary Challenges to Cultural Revitalization
- ★ Salvage Science and the Usurpation of physical and intellectual control over cultural heritage
- ★ Rights issues in relation to status, urban and reservations, recognized and non-recognized, membership and disenrolled or descendance
- ★ Need for Land Acknowledgements (Especially on public lands)
- ★ Visibility of Native Language

⁶⁴ Vasquez (2019) and Riske-Gomez (2016).

Public Protocols and Awareness

- ★ Signs, PSA campaigns: Culture is not a Crime, CULTURE CARD

Legislative Advocacy

Share Findings, Summarize Issues, TYA meetings with local and state representatives, Discuss need for Regulatory Changes, such as permit fee waivers, anti-pesticide, pesticide warning, mandatory training, Ancestral Gathering Rights for California Indians, Cultural Resource Protection

Agency (Park) Advocacy

Ranger Discretion, Educational workshops (mandated), Trauma Informed Education, Summarize Accessibility Issues, Discuss Transparency Needs, Clarification Needs, Discuss Flexibility Needs, How to streamline permit process, Discuss Impacts of Climate Change, Propose Fee Waivers and Code Revisions, Review Park Land Management Policies, Anti Pesticide Policy, Pesticide Warning Policy, TEK Policy Practices (Such as Native Pest Control).

Alliance Building

Identify Ally and Build Trust, Collaborative Projects/Partnerships, Engage Tribal EPA and Historic Preservation departments, Decolonizing Relationships and Reciprocity

Public Education

K through 12 curricula that foster appreciation and respect for tribal culture and environmental stewardship
White Privilege and Cultural Appropriation

Tribal Community Education and Tools

Knowing rights and preparing for “civil disobedience”
Historical Trauma and Deescalating Confrontation

TEK and Environmental Issues

Counteract Usurpation of Tribal Authority over Ancestral Territories
Necessity of Indigenous Practices as Part of Native Landscape
Raise Visibility of Tribal TEK and Benefits in Counteracting Climate Change
Identify Pesticide Applications on or near Cultural Resources and Gathering Areas,
Educate about At Risk Cultural Resources and Populations
Cultural Resource Protections (We can't gather what is not there)

Wildfires, Climate Change, Restricted Access during COVID-19 or after Disaster

Potential TYA/Institutional Actions



TYA Launches Public Awareness Campaign to Increase Equity in Shared Spaces (As Long As the Grass Shall Grow, Will Yours Always Be Greener?)

TYA/CIMCC publishes CULTURE CARD to educate the public about ancestral gathering rights issues, increase public understanding and mitigate negative perceptions (criminalization and stereotypes)

TYA/CIMCC publishes Native plant and cultural resource identification cards

TYA/CIMCC advocates for local parks to distribute culture cards, cultural protocol handouts/signage, post land acknowledgement

TYA/CIMCC creates Cultural Gather Identifying Equipment (shirts, vests, bags)

TYA/CIMCC adopts traditional foods policies, purchases event foods from native vendors, caterers, only serve native teas and water at events, etc.

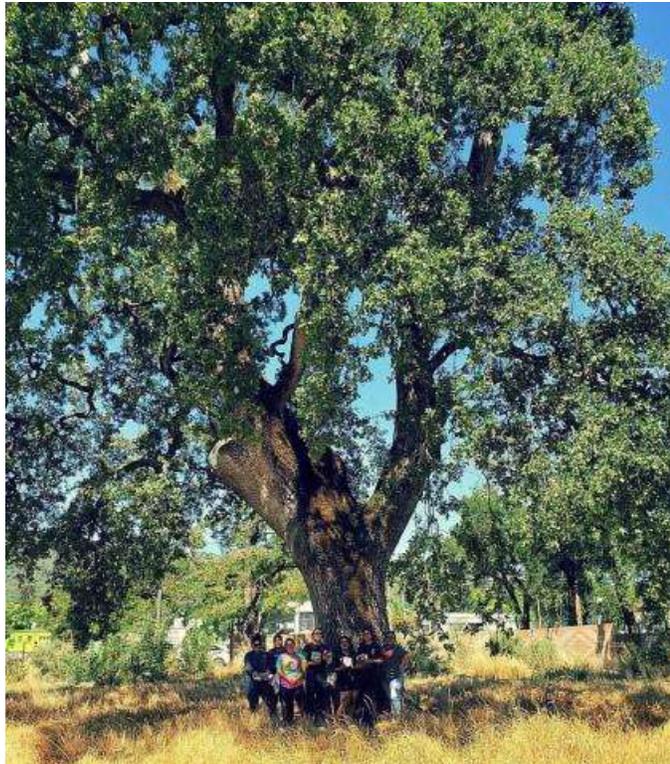
TYA/CIMC obtains seasonal permits and/or MOU's with county and certifies tribal community harvesters

- ★ Howarth Park
- ★ Foothill Park

TYA/CIMCC programming engages cultural educators, native plant identification, stewardship and tribal TEK

TYA/CIMCC publishes recipes, curricula and plant identification materials

TYA/CIMCC partners with local organizations to educate, promote native plant stewardship and cultural education and protocols, establish reciprocity and boundaries with allies and partners



TYA/CIMCC increases availability and distribution of native foods to community members, through products, food hub, garden and partnerships

TYA/CIMCC Identifies and Documents “Safe” Gathering Areas, through GIS MAP, make information accessible to Tribal Community Members

TYA/CIMC Creates At Risk Sheets for Cultural Resources and Populations

TYA/CIMCC works with tribes to adopt Traditional Gathering and Food Revitalization Resolutions

TYA/CIMCC Creates Know Your Gathering Rights Map with updated information about permits, fees, fines, and community/gatherer reflections

TYA/CIMCC Creates a Grow Your Own Guide to Starting A Traditional Foods/Cultural Resources Garden

TYA/CIMCC Partners with Native Farm to Distribute Fresh Fruits and Vegetables and Make Indigenous Food Items Accessible at Museum Location creating Native Food Box Program

TYA/CIMCC Create Intertribal Ancestral Gathering/Traditional Food Harvester Policy Council