

PATHWAYS TO LAND JUSTICE:

A Look at Land Back and Restored Relationship to Land

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“History suggests that if mankind is to survive, the next five hundred years must be rooted in the pre-Columbian ethic of the Native American. The second American quincentenary belongs to the Indian. The continuation of the past, the conqueror’s exploitation of the earth, can mean only one thing. No one, Indian or non-Indian, will survive.”

— Rennard Strickland, (Osage & Cherokee) Professor Emeritus, University of Oregon School of Law

ABOUT THIS PAPER

This paper began as part of an ongoing discussion at The Wilderness Society on the topic of Land Back and is intended as a resource on the various methodologies, practices, and language on the topic- not as a conclusion. It is shared in the spirit of encouraging further critical conversations and, more importantly, actions grounded in justice and equity that honor and protect the land and all that depend upon it.

Additionally, while this paper specifically focuses on the topic of Land Back in regard to Native Nations and Indigenous communities, we acknowledge the distinct connections that many other Black and Indigenous People of Color (BIPOC) communities have to lands in the United States and the challenges that they continue to face in connection to these landscapes.

AUTHOR’S NOTE

While all efforts have been made to be aware of and deferential to Native priorities, I understand that inherent bias may be included in this paper and ask the reader to prioritize Native voices, experiences, and contexts. Direct links and quotes from Indigenous and Land Back movement leaders have been shared throughout this paper, and further exploration on the topic from these important voices is recommended.

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Finally, a special thank you to all those who contributed to the editing and review of this document, including Peggy Mainor of The MICA Group who provided informal review.

INTRODUCTION

Native American and Indigenous communities have been deprived of their natal and ancestral lands through coercion, violence, lies, and theft. Even when tribes entered into treaties with the federal government, those nation-to-nation agreements were frequently broken to accommodate the interests of the U.S. Government. Native Americans and Indigenous communities retain deep spiritual and cultural ties to these lands, many of which are now a part of the public domain and designated as ‘wilderness’, ‘refuges’, and for other multiple-use purposes.

This is the legacy the public has inherited and the reality we must face. Some of the underlying questions inherent to this conversation include: What should be done to address these past wrongs? How can we honor and support the interests of Native American and Indigenous communities? How do the missions of conservation organizations align with the call to return public lands to Indigenous peoples? And what is to be done if or when an organization’s mission and the interests of Native American and Indigenous communities appear to collide?

This paper is organized around research on the concepts of Land Back regarding federally-held public lands and is meant as a place to start crucial conversations. It focuses on various pathways towards land justice, with case studies and definitions. The term ‘Land Back’ here, and in practice, is used both as an action, and as the name of the larger movement towards land repatriation and rematriation. As an action, land back encompasses a wide variety of formats including co-management, easements, land transfers, etc. As an environmental and social justice movement, Land Back is intrinsically linked to decolonization, tribal sovereignty, food sovereignty, and intimate personal connection to kin (the land).

Additional information, including reading recommendations, definitions, and toolkits may be found in the appendices.

LAND SCOPE

As original peoples to this landscape, all of what is now called the United States of America was once land that was ceded by or taken from tribes through treaties and forced removal. Even so, “with more than 60 million acres, viewed collectively, tribes are the fifth largest owners of land in the United States.”¹ It’s important to note however, that tribal reservation lands are held in trust by the U.S. Government and are not directly held by tribes.

In reference to total lands owned, “Tribes are behind only the federal Bureau of Land Management (250 million acres), the U.S. Forest Service (190 million acres), the Fish and Wildlife Service (90 million acres), the National Park Service (80 million acres), and the State of Alaska.”² (See Table 1). These publicly held lands are those which are most often referenced in Land Back conversations, specifically during topics of co-management and transfer of land to trust.

FEDERAL LAND BY AGENCY	
Bureau of Land Management	250 million acres
U.S. Forest Service	190 million acres
Fish and Wildlife Service	90 million acres
National Park Service	80 million acres
Department of Defense	11 million acres
Other Agencies	15-20 million acres
TOTAL FEDERAL PUBLIC LAND	~640 million acres

Table 1: Federal land by agency (from Kevin Washburn’s paper, Simple Tribal Co-Management: Using Existing Authority to Engage Tribal Nations in Co-Management of Federal Public Lands)

While there are no wide calls within the Land Back movement for the return of privately held lands to Native Nations, there have been a number of cases where tribes have purchased lands from willing sellers or accepted lands donated voluntarily from private interests.

PATHWAYS TO LAND JUSTICE

Land justice is the equitable access to land for oppressed peoples, and stems from the unequal distribution, theft, and ownership of land. As ownership of land is also a form of power, land justice is the return of that power via land to oppressed peoples. While the term is occasionally

¹ Kevin K. Washburn, “Simple Tribal Co-Management: Using Existing Authority to Engage Tribal Nations in Co-Management of Federal Public Lands,” *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.3951290>.

² *Id.* Washburn

used interchangeably with the term land back, they have inherently different meanings, though shared justice pathways.

Figure 1 below outlines various pathways towards land justice and current avenues towards restoring tribal relationship with the land, a concept at the heart of the Land Back movement. Each circle within the restored relationships circle represents a variety of opportunities towards land justice across the spectrum of ownership and stewardship (or management) types. These are the current most common pathways, but others are yet to be imagined. What isn't shown in this diagram is the relative impact or importance of each pathway; because land is intrinsically connected to self, food sovereignty, wealth, and community health for Native Nations, land redistribution *is* power and wealth redistribution – the cores of land justice. Therefore, the most powerful or impactful methods towards land justice are those of ownership conferral.

It's important to note that payments or financial reparations (in the purple circle) are not included in the pathways to restored relationship. While payments are an important pathway towards land justice due to their ability to lift a community, they only tangentially lead towards restored relationship through their ability to provide financial means towards land purchases.

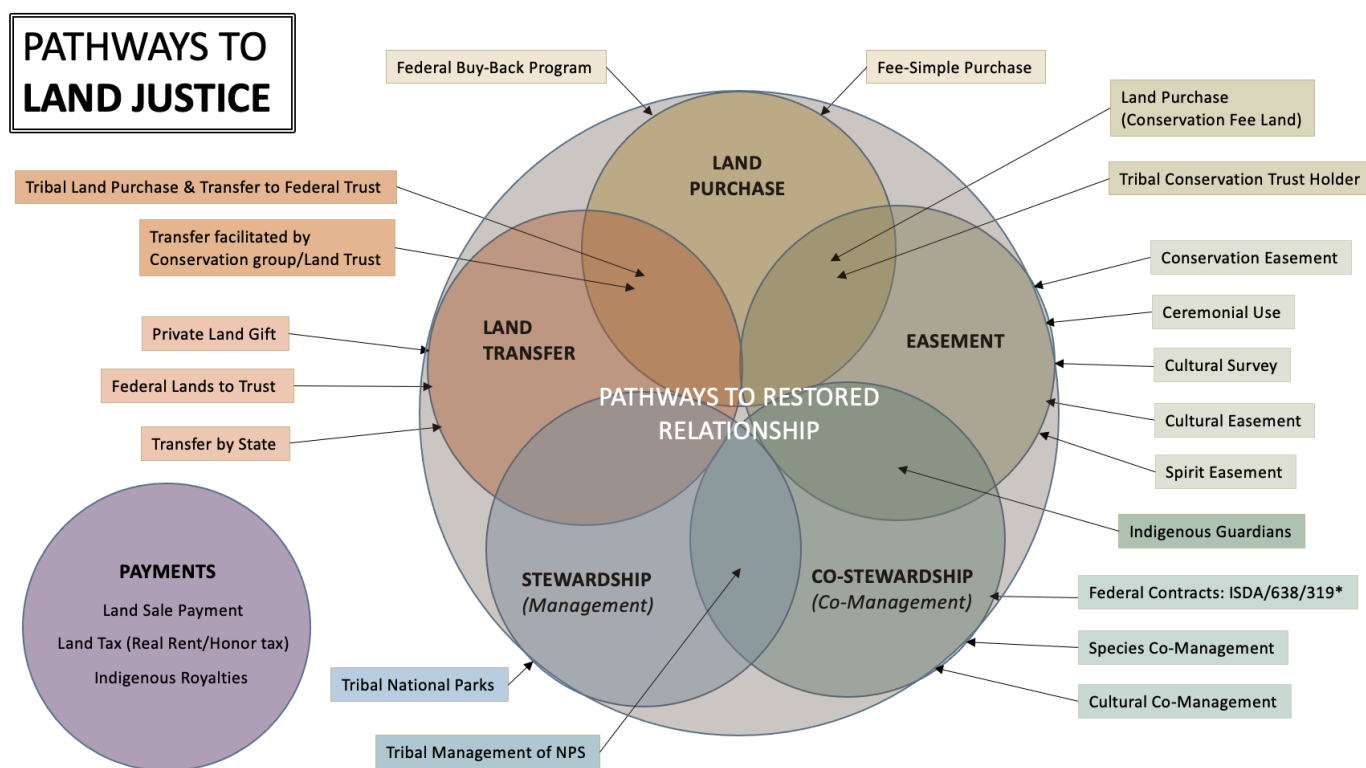


Figure 1: Pathways to Land Justice and Restored Relationship, Ashley Gries.

Below are examples of the various pathways to land justice highlighted in *Figure 1*.

1) Land Transfer

a) **Transfer by State**

State-owned lands transferred to a tribe or tribal group.

- i) The State of Minnesota returned lands to the Lower Sioux Nation by way of the Minnesota Historical Society (MHS). The land, which includes the site of the start of the U.S. Dakota War of 1862, has been held by the MHS for decades. As funding ran out for MHS programming, the Lower Sioux Nation stepped in to assist in managing the property and provided supplemental funding so that the property would not be lost to public sale. After several years, the Tribe was approached by the state for full ownership via transfer of title to the property. See: [Lower Sioux Land Returned](#)

b) **Federal Lands to Trust**

Federally-held lands such as those from the Bureau of Land Management (BLM), U.S. Forest Service (USFS), National Park Service (NPS), etc. that are removed from public holdings and placed in trust by the Department of the Interior for (a) federally-recognized Native Nation(s).

- i) In 2021, the federal government transferred approximately 19,000 acres of the federally-held National Bison Range (NBR) to be held in trust by the Bureau of Indian Affairs for the Confederated Salish and Kootenai Tribes (CSKT) of the Flathead Reservation in Montana. The NBR was sited wholly within the CSKT Tribal Reservation and was managed as a National Wildlife Refuge by the U.S. Fish & Wildlife Service (USFWS), then by CSKT for the USFWS through the Tribal Self-Governance Act. Through ongoing, concerted efforts, the NBR was restored to federal trust ownership for the CSKT. See: [Bison Range Restoration](#) and [BIA Land Acquisition Notice](#)

c) **Private Land Gift**

Privately owned lands gifted to a tribe or tribal group.

- i) In northeastern Nebraska, farmers Art & Helen Tanderup cultivated a relationship with the Ponca Tribe over the course of a decade, offering a verbal cultural easement and hosting the Ponca's annual harvest celebration on their farm, which was on the site of traditional Ponca homelands. In recognition of the significance of the land to the Ponca, the Tanderups transferred title of their held lands to the Ponca Tribe, with an easement to live on the property until their passing. See: [Ponca Tribe Land Transfer](#)

d) **Land Transfer facilitated by Conservation Group**

Accomplished through a variety of measures, but commonly includes privately owned lands and land rights wherein a conservation group negotiates legal transfer to a Native Nation or indigenous group.

- i) The Nimmie Caira project in Australia is one of the largest completed land transfers in the country at over 200,000 acres. Federal & State governments purchased the land and associated water rights from 19 separate farm properties for \$180 million dollars with the goal of restoring wetlands damaged by agricultural water diversions. Interested parties were invited to submit proposals for management of the wetlands, and a consortium that included The Nature Conservancy (TNC) and the Tribal council of the Nari Nari won the rights. In 2019, TNC facilitated the legal transfer of ownership to the Nari Nari using funds from the Indigenous Land and Sea Corporation and the Wyss Campaign for Nature. See: [Nimmie-Caira Project](#)
- ii) In the US, the most commonly found land transfers within this body of research were those facilitated by a conservation group or land trust. In the northeastern U.S., [First Light](#), a wide consortium of conservation organizations and land trusts, is currently working to restore access and land titles to area Native Nations and provides a great example for transfer of ownership and power to Native Nations.

2) Land Purchase

a) **Land Purchase & Transfer to Federal Trust**

Purchase of privately owned lands, whose legal rights are then transferred to be held in trust by the Secretary of the Interior.

- i) In 2012, the Rosebud Sioux Tribe purchased the land of Pe' Sla (Reynold's Prairie) in the Black Hills for \$9-million dollars with 10% earnest money on behalf of a consortium of tribes that included several Lakota, Nakota, and Dakota Tribes. The Tribes worked together to internally raise the funds for the purchase of the sacred land, and through assistance from the Indian Land Tenure Foundation and a joint website, they finalized their fundraising later that year. The land was then transferred to Trust for the Tribes through the Bureau of Indian Affairs (BIA). See: [Pe' Sla Purchase](#)

b) **Federal Buy-Back Program**

According to the Bureau of Indian Affairs (BIA), the Buy-Back Program "implements the land consolidation component of the Cobell Settlement, which provided \$1.9 billion to consolidate fractional interests in trust or restricted land within a 10-year period, set to expire in November 2022." Interests consolidated through the program are restored to tribal trust ownership with the BIA. Fractional interests being those legal interests of native allotments that have been passed down through generations and divided unto descendants.

c) **Fee-Simple Purchase**

Purchase of a parcel of land (real property) and all of its 'bundle of rights', including right of possession, right of control, right of enjoyment, right of disposition, and the right of exclusion. This is the primary way that land is purchased in the United States.

- 3) **Easement** –*The legal right to use someone else’s property. There are a variety of easement types that pertain to various uses of and rights to a property- see below.*

a) Tribal Conservation Trust Holder

A Tribal conservation easement is one in which a landowner and tribe or tribal trust enter into a voluntary legal agreement to protect a land’s conservation values.

- i) At the Yainix Ranch Project, the Klamath Tribe holds the conservation easement, and are solely responsible for monitoring and protecting the ecological health of a 788-acre parcel of land in the Upper Klamath Basin in southern Oregon. The Hyde family, who have owned and lived on the property for decades, knew they wanted to protect its unique ecological values as the valley continued to deteriorate from salinization and over-grazing, and sold a conservation easement to the Klamath Tribe. A multi-party grazing management and monitoring strategy was designed to restore proper functioning condition of the river running through the property, and Sustainable Northwest, a non-profit focused on stewarding healthy working lands, stepped in as a partner and organized a group of investors who bridged the income gap between historical stocking rates and sustainable rates. See: [Yainix Ranch Project](#)

b) Conservation Easement

“A voluntary, legal agreement that permanently limits the uses of the land in order to protect its conservation values.” ([National Conservation Easement Database](#))

Traditionally, conservation easements allow land to continue to be privately held, while the conservation values are maintained by an external party, typically a land trust or government entity. (See also: Tribal Conservation Trust Holder, above.) A challenge often overlooked is that these easements typically restrict the use of the land in a manner that also restricts ceremonial or cultural uses for tribes, as well as harvesting of traditional foods and medicines.

c) Ceremonial Use

A voluntary legal agreement which grants specific tribes or tribal entities the use of land for ceremonies and ceremonial use. (See: ‘Cultural Easement’.)

d) Cultural Survey

Typically conducted by a tribe or tribal consortia, a cultural survey is a mapping of cultural values of an area. Frequently used in Canada for defending traditional territories of tribes and for impact assessments and land use planning.

- i) [Cultural Survey Recommendations from the Yellowhead Institute](#)

e) Cultural Easement

A voluntary legal agreement which grants specific tribes or tribal entities the use of a privately held land for cultural uses which are defined within the agreement. Cultural

uses may include gathering of foods and medicines, ceremonial uses, traditional hunting, etc.

i) In 2017, the Amah Mutsun Tribal Band won the permanent rights to use the Sierra Azul Open Space Preserve for cultural purposes. The Preserve, atop Mount Umunhum in California, includes 36 acres of land central to the creation story of the Amah Mutsun, and sacred to their Tribe. The agreement with the Midpeninsula Regional Open Space District allows for the creation of a native plant garden and ceremonial access to the site, and restricts new buildings on the sacred area. The Tribe will also provide cultural and educational outreach and guidance to the district. See: [Mount Umunhum Cultural Easement](#)

ii) In 2021, The Dennis Conservation Land Trust (DCLT) of Massachusetts signed an agreement with the Native Land Conservancy (a Native-led land trust based in the northeast) to allow indigenous cultural and ceremonial use of any DCLT-held trust lands in perpetuity. In 2016, the two organizations had signed a cultural use agreement for cultural access to the DCLT's largest land parcel, and upon its expiration looked to improve upon it, leading to the expansion of access for the region's tribes. See: [DCLT-NLC Cultural Respect Easement](#)

iii) Example Cultural Easement Documents: [The Cultural Conservancy, The State of Maine Cultural Use Agreement, & Dickinson's Reach Cultural Use Invitation](#)

f) Spirit Easement

According to the Methow Conservancy, a spirit easement is a "legal easement that permanently runs with the land that acknowledges that a property is open and welcoming to all spirits of a tribe's deceased peoples, and that as current landowners, with a good heart, you welcome those spirits to access, inhabit, or use in any other way this property as part of their Spirit Homeland." See: [Methow Spirit Easement](#)

4) Co-Stewardship (co-management)

a) Indigenous Guardians

The [Indigenous Leadership Initiative](#) describes Indigenous Guardians as "trained (Indigenous) experts who manage protected areas, restore animals and plants, test water quality and monitor development." Primarily found in Canada and Australia, Indigenous Guardians are responsible for a variety of land and species management, research, and conservation planning through traditional and non-traditional pathways.

i) The Ahousaht Stewardship Guardian Program collaborates on a number of co-stewardship projects through their Indigenous Guardians. In 2021, Guardians of the program oversaw the restoration of four rivers and creeks, resulting in increased stream connectivity and additional spawning habitat. The Guardians also oversaw monitoring of sea lice on wild fish, and have collaborated with local conservation organizations on projects including the Central West Coast Forest Society, the Nuu-Chah-Nulth Tribal Council, and Strawberry Isle Marine Research Society. See: [Ahousaht Stewardship Guardian Program](#). See Also: [Indigenous Guardians Toolkit](#)

b) Federal Contracts

Federal contracts are contracts made between Native Nations and federal agencies for management and restoration projects on federal lands as made possible through the Indian Self Determination Act of 1975 (ISDA) (otherwise known as Public Law 93-638, and known as 638 contracts), the Tribal Self Governance Act of 1994 (TSGA), and the Environmental Protection Agency's 319 grant programs.

- i) In 2004, the U.S. Fish and Wildlife Service (USFWS) signed a contract for an annual funding agreement (AFA) with the Council of Athabascan Tribal Governments (CATG) under the Tribal Self Governance Act of 1994 for the management of “programs, services, functions, and activities” in the Yukon Flats. These projects include citizen science projects, hiring technicians to monitor snowpack, migratory bird arrival, and more. The project is the first co-management in conjunction with the USFWS using the Indian Self-Determination Act. CATG has gone on to sign federal contracts with the Bureau of Land Management for fire management and training using the Indian Self Determination Act (ISDA) of 1975. See: [Yukon Flats](#).

c) Species Co-Management

Management of species whereby land holders such as the U.S. government, or conservation trust organizations share responsibility and management of species with Indigenous groups and/or Native Nations. This may be through a federal contract (see above) or private agreement, but may also be between Native Nations.

- i) In early 2022, the Cree and Innu Nations signed an agreement for mutual co-management of the caribou herds so important to their cultures. The agreement allows for a joint community hunt of the Leaf River caribou herd, for which the Cree will share almost half of their allowable harvest with the Innu. The hunt aims to revive shared pathways of learning with youth in both communities, and to revive sustainable harvesting and traditional herd management techniques. This co-management agreement was completely independent of the Canadian government, and is an affirmation of sovereignty and friendship between the two Nations. See: [Cree & Innu Caribou Agreement](#)

5) Stewardship (management)

a) Tribal National Parks

A National Park entirely within tribal lands and that is stewarded by tribes.

- i) The Navajo Nation Parks & Recreation Department manages several tribal national parks in the American southwest and describes their work as: “*Our Mission is to protect, preserve and manage tribal parks, monuments and recreation areas for the perpetual enjoyment and benefit of the Navajo Nation – the spectacular landscapes, buttes, canyons, clean air, diversity of plants and wildlife, and areas of beauty and solitude.*” These parks are completely within the Navajo Nation, and are managed, funded, and maintained by the Nation. See: [Navajo Nation National Parks](#)

CHALLENGES TO LAND BACK

While mending the relationship to land is necessary on the path to land justice for Native Nations, the means and methods are as broadly defined as are individual Nations, and they should be tailored to each. Themes that emerged from the case studies listed above as potential challenges to returning Native lands to Native hands included:

- Intertribal conflict over shared landscapes
- Intratribal conflict over stewardship and management tactics and priorities
- Intertribal inequities between heavily resourced tribes and those tribes with fewer resources
- Tribal priorities that may compromise ecological values or otherwise conflict with existing land managers, agencies, or non-profits' goals
- Funding challenges for tribes in both the acquisition and ongoing management of properties
- Public and political opposition stemming from a variety of factors including racism, loss of control of lands, and ideological differences
- The federal trust status of tribal lands, which poses challenges to tribes in the autonomous management of those lands, the ability of non-federally recognized tribes to participate in management activities, federal funding opportunities for management activities, etc.

Regarding co-management specifically, there are several examples of tribal contracting through the Indian Self-Determination Act of 1975 ('638 programs') or Tribal Self-Governance Act of 1994 as a positive avenue for continued contracting and co-management, though even with the implementation of the Indian Self-Determination Act (ISDA), under which tribes won federal authority to contract for operation of federal programs, Native Nations face challenges including a reluctance by federal land managers to relinquish control. This could be in part due to several factors including lack of trust in tribal abilities or resources, unfamiliarity with positive co-management techniques, and fear of job loss or reduction in tenure for federal employees. Federal contracts are a major co-management opportunity for tribes to manage public lands, but do not necessarily offer the depth of repair and justice that tribal ownership of land may provide. For an in-depth look at co-management of public lands, see Kevin Washburn's paper on "Facilitating Tribal Co-Management of Federal Public Lands" and other resources in Appendix C.

Native Nations also face a lack of tribal resourcing as funding for federal land management contracts through the ISDA and other programs do not include overhead, administration, or equipment costs.

CONCLUSIONS

While this paper does not seek to make any conclusions for its reader on the ideal means of land justice, we must acknowledge two key facts: that every Native Nation and Indigenous community may be different in their preferred approach to land justice, and that the need for land justice is evident.

From language, to relationship to the land, to community values and needs, every Native Nation may have varying opinions on the topics and concepts covered in this research including the ideal use of public lands or the preferred approach to land justice. Yet, recent research has overwhelmingly shown that “recognizing Indigenous peoples’ rights to land...is essential to meeting local and global conservation goals” and that conservation may be more efficient and effective when managed by Indigenous communities.^{3,4,5}

Conservation organizations and their partners have the opportunity then to support Indigenous-led efforts towards increased co-management, the return of federal lands to Native Nations, and actions that promote the restored relationship to land for tribes.

“...while Indigenous Peoples have the right to be consulted, Indigenous Peoples do not have veto power over unwanted government or corporate land use, mineral extractions, and are not compensated for their land and mineral wealth losses. In effect, the (UN) Declaration and supporting international laws restrict indigenous self-determination to cultural and social issues, but leave the land, resources, and government-to-government relations firmly in the hands of nation-states.”

– Duane Champagne (Turtle Mountain Chippewa), Professor Emeritus, UCLA Law

³ “How Returning Lands to Native Tribes Is Helping Protect Nature,” Yale E360, <https://e360.yale.edu/features/how-returning-lands-to-native-tribes-is-helping-protect-nature>.

⁴ Stephen T. Garnett et al., “A Spatial Overview of the Global Importance of Indigenous Lands for Conservation,” *Nature Sustainability* 1, no. 7 (July 2018): 369–74, <https://doi.org/10.1038/s41893-018-0100-6>.

⁵ Neil Dawson et al., “The Role of Indigenous Peoples and Local Communities in Effective and Equitable Conservation,” *Ecology and Society* 26, no. 3 (September 2, 2021), <https://doi.org/10.5751/ES-12625-260319>.

CONVERSATION STARTERS AND TOPIC EXPLORATION

The questions below are meant as a jumping-off point for further conversations around ways to increase tribal management, co-management, and ownership of ancestral homelands and how organizations can contribute to those efforts in a meaningful way.

- 1) How can conservation organizations and partners be inclusive and effective in efforts towards system and policy reform for meaningful land justice?
- 2) How can the Tribal Self Governance Act (TSGA), Indian Self-Determination Act (ISDA), Tribal Forest Protection Act (TFPA), or other legal levers be used for increased tribal contracting and co-management of public lands and projects?
 - a) What legal opportunities exist for co-management and use at the state level?
 - b) What opportunities exist for co-management and use for non-federally recognized Native Nations?
- 3) What should conservation organizations do when or if their mission and the interests of Native American and Indigenous communities appear to collide?
- 4) Consider and explore your reactions to the following quote from Peter Forbes, facilitator at the Center for Humans and Nature:

“White-led conservation has consistently put our sense of what nature needs over the sovereignty of Native people and other people of color. The losses to everyone from this moral superiority have been staggering.”

APPENDIX A

Definitions

The definitions below are meant as an interpretation of each term. References from a wide variety of sources often with competing or divergent definitions were collected, with favor given to those definitions arising from Native sources, along with U.S. federal definitions. These definitions are not exhaustive but are meant to be a starting point for further conversations. Great effort was taken to center Indigenous meanings and contexts below. Where appropriate, quotes from Indigenous thought leaders have been included for additional clarification.

Colonization

Duane Champagne, Turtle Mountain Chippewa and Director of the Native Nations Law and Policy Center at UCLA, defines colonization as “an expression for the subordination of Indian peoples and their rights,” or more succinctly, “any type of external control”.⁶

Colonization of the continental U.S. occurred prior to Christopher Columbus’ arrival and the onslaught of colonial immigrants and continues to this day through settler-colonialism and in Federal Indian law and policy.

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Decolonization

“Decolonization is about “cultural, psychological, and economic freedom” for Indigenous people with the goal of achieving Indigenous sovereignty,”⁷ and is the responsibility of all people, as we are all affected by the historical traumas of colonization.

It’s important to note that there is a sentiment that the body of work of research and study of colonization and decolonization are in fact studies of colonialism and not of indigenous studies – rather that the focus is on the continuation of the perception of Indigenous peoples as helpless or marginalized rather than as the primary actors in their own evolution and fates. “The problem with using such an approach is that it does not give central place to indigenous peoples or their abilities to make choices, form resistance, achieve a measure of success, and does not account for the continuity of indigenous communities, viewpoints, and social and political action despite 500 years of colonial relations.”⁸ In considering decolonization in this context, “...if all change from traditional tribal society is considered a form of colonization, then no constructive change is possible or desirable.”⁹

⁶ Duane Champagne, “Assimilation, Integration and Colonization,” Indian Country Today, accessed December 14, 2021, <https://indiancountrytoday.com/archive/assimilation-integration-and-colonization>.

⁷ “What Is Decolonization?,” *Interdependence: Global Solidarity and Local Actions* (blog), accessed December 14, 2021, <https://globalsolidaritylocalaction.sites.haverford.edu/what-is-decolonization-why-is-it-important/>.

⁸ ICMN Guest Editorial, “Decolonizing Decolonization,” Indian Country Today, accessed December 14, 2021, <https://indiancountrytoday.com/archive/decolonizing-decolonization>.

⁹ *Id.* ICMN

Nikki Sanchez, decolonization researcher of Pipil descent, offers a fantastic look at decolonization in her YouTube video [*Decolonization is for Everyone*](#), as well as through her organization [Decolonize Together](#), which offers decolonial and anti-racism training. Additional context and recommendations on decolonization practices can be found at Haverford College's Global Solidarity, Local Actions site: [What is decolonization, why is it important, and how can we practice it?](#).

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Federal Contracts

Those contracts required or mandated by Federal law. Federal contracts are contracts made between Native Nations and federal agencies for management and restoration projects on federal lands as made possible through the Indian Self Determination Act of 1975 (ISDA) (otherwise known as Public Law 93-638, and known as 638 contracts), the Tribal Self Governance Act of 1994 (TSGA), and the Environmental Protection Agency's 319 grant programs.

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Honor Tax (See also: *Land Tax and Real Rent*)

Honor Tax is a voluntary payment to Native Nations by people who live on their traditional territories.

"The Honor Tax is a way of recognizing and respecting the sovereignty of Native Nations and implementing the United Nations Declaration on the Rights of Indigenous Peoples."¹⁰ It is also a means towards decolonization through financial reparations.

Visit [honortax.org](#) and [Shuumi Land Tax](#) for examples of voluntary honor tax programs.

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Indigenous Royalties

Royalty payments made to Native Nations or Indigenous groups from the sale of products or resources that are extracted, sold, or manufactured on Indigenous lands. Historical context typically refers to royalties paid by mining companies for extractions on Indigenous lands, though new contexts include payments by private businesses as a portion of sales to Native Nations and payments of a portion of land or property sales.

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Land Back

The term 'Land Back' is used both as an action, and as the name of the larger movement towards land repatriation and rematriation. Land back as an environmental and social justice movement is intrinsically linked to decolonization, tribal sovereignty, food sovereignty, and intimate personal connection to kin (the land).

Definitions vary for the term, for instance, Winona LaDuke, Ojibwe Activist and Environmentalist states that Land Back is about "...*putting Indigenous Lands into Indigenous hands*", while others such as Land Back movement leaders NDN Collective describe it as "*the*

¹⁰ Honortax.Org. (n.d.). <http://www.honortax.org/index.html>.

reclamation of everything stolen from the original Peoples. Land, Language, Ceremony, Medicines, Kinship. A relationship with Mother Earth that is symbolic and just, where we have reclaimed stewardship. It is bringing our people with us as we move towards liberation and embodied sovereignty through an organizing, political and narrative framework. It is our belonging to the land - because - we are the land”.

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Land Justice

Land justice is the equitable access to land and the belief that oppressed peoples have a right to land. Stemming out of unequal distribution, theft, and ownership of land, if ownership of land is also a form of power, then land justice is the return of power and land to oppressed peoples. Sometimes referred to in discussions of food systems, food sovereignty, and Indigenous feminism. *See also: Land Back.*

The book [Land Justice: Re-imagining Land, Food, and the Commons](#) explores the topic of interwoven concepts of food sovereignty, power and access to land.

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Land Restitution

The return of lands that were stolen. More broadly, it may mean the redistribution of power and wealth to Indigenous peoples in the form of land taxes, private land gifts, or other means.¹¹ Also: A form of reparation for Indigenous peoples whose land was stolen.

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Land Tax *(See also: Real Rent and Honor Tax)*

Land Tax is a voluntary payment to Native Nations by people who live on their traditional territories.

“(It) is a way of recognizing and respecting the sovereignty of Native Nations and implementing the United Nations Declaration on the Rights of Indigenous Peoples.”¹² It is also a means towards decolonization through financial reparations. Visit honortax.org and [Shuumi Land Tax](#) for examples of voluntary honor tax programs.

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Native Land Trust

A Native organization owned and run by a tribe, group of tribes, or Indigenous group with the purpose of acquiring land, cultural easements, or conservation easements.

“The Code of Federal Regulations (CFR 25 Part 151) explains governing the acquisition of land by the United States in trust status for individual Indians and tribes. It can be a very long, very expensive and sometimes controversial process. By establishing a land conservancy, tribes can protect culturally significant, ethnobotanical or traditional use lands through ownership, cultural easements or conservation easements. A tribal land conservancy is also a way for

¹¹ Global Solidarity and Local Actions (n.d.). How Does Land Restitution and the Land Back Movement Work in Practice? *Interdependence: Global Solidarity and Local Actions* [blog].

<https://globalsolidaritylocalaction.sites.haverford.edu/what-does-land-restitution-mean/>.

¹² Honortax.Org

several federally recognized tribes to own land jointly.” - Lisa Haws, Kumeyaay-Digueño Land Conservancy

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Real Rent (See also: *Land Tax and Honor Tax*)

Real rent is a voluntary payment to Native Nations by people who live on their traditional territories.

“(It) is a way of recognizing and respecting the sovereignty of Native Nations and implementing the United Nations Declaration on the Rights of Indigenous Peoples.”¹³ Also, a means towards decolonization through financial reparations. Visit honortax.org and [Shuumi Land Tax](#) for examples of voluntary honor tax programs.

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Rematriation

An indigenous feminist concept meaning to return to the sacred mother (Earth); the restoration and reclaiming of relationship with the earth, ways of life, spirituality, and rights of relationship. The term is often used in lieu of ‘repatriation’.

Also: A spiritually conscious movement led by Indigenous women.¹⁴

"By rematriation I mean to restore a living culture to its rightful place on Mother Earth, or to restore a people to a spiritual way of life, in sacred relationship with their ancestral lands, without external interference. As a concept, rematriation acknowledges that our ancestors lived in spiritual relationship with our lands for thousands of years, and that we have a sacred duty to maintain that relationship for the benefit of our future generations.”¹⁵ – Steven Newcomb (Shawnee/Lenape), Executive Director, Indigenous Law Institute

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Reparations

According to the United Nations’ [Resolution on the Basic Principles and Guidelines on the Right to Remedy and Reparation for Victims of Gross Violations of International Human Rights Law \(2005\)](#), reparations should be “proportional to the gravity of the violations and the harm suffered” and should include:

- 1) Cessation and assurances.
- 2) Restitution that restores the victim to the original situation prior to the gross violation of human rights, and compensation for “any economically assessable damage” such as physical or mental harm, lost opportunities and social benefits, material damages, loss of earnings, moral damages, and the costs required for legal, medical, psychological, and social services.
- 3) Rehabilitation including medical, psychological, legal, and social services.

¹³ Honortax.Org

¹⁴ Rematriation [website]. <https://rematriation.com/>.

¹⁵ Newcomb, Steven. (n.d.). Healing, Restoration, and Rematriation. *Perspectives: Indigenous Law Institute*. <http://ili.nativeweb.org/perspect.html>.

- 4) 'Satisfaction' including "effective measures aimed at cessation of continuing violations", an official declaration restoring the "dignity, reputation, and rights of the victims", a public apology, and judicial and administrative sanctions against those liable.
- 5) Guarantees of non-repetition through legal, judicial, educational, social, and military means.¹⁶

Land reparations are reparations made for the theft of land and removal of Indigenous families from the land and may include the redistribution of power and wealth to Indigenous peoples in the form of land taxes, private land gifts, or financial payments. For a more comprehensive look at reparations look to: [The Complexities of Land Reparations](#) by Gregory Alexander.

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Repatriation

Western in context, repatriation is the masculine or western legal idea of transfer of ownership that only returns those *tangible* items stolen from a people – land, artifacts, remains, or cultural property. Frequently cited in reference to the Native American Graves and Repatriation Act (NAGPRA)¹⁷. A wider use of the term includes the return of all cultural 'property' to Indigenous peoples, including their ways of life, lands, traditional foods, languages, etc. (this may also be referred to as rematriation).¹⁸

Restitution

According to the U.N., restitution includes: "restitution of liberty, enjoyment of human rights, identity, family life and citizenship, return to one's place of residence, restoration of employment and return of property."¹⁹

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Sacred Site

The U.S. Government defines sacred sites as: "...any specific, discrete, narrowly delineated location on Federal land that is identified by an Indian tribe, or Indian individual determined to be an appropriately authoritative representative of an Indian religion, as sacred by virtue of its established religious significance to, or ceremonial use by, an Indian religion; provided that the tribe or appropriately authoritative representative of an Indian religion has informed the agency of the existence of such a site."²⁰

¹⁶ U.N. (2005). Basic Principles and Guidelines on the Right to a Remedy and reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law. *United Nations Victims of Terrorism Support Portal*. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N05/496/42/PDF/N0549642.pdf>.

¹⁷ National Park Service. (n.d.) *Native American Graves Protection and Repatriation Act* [website]. U.S. National Park Service. <https://www.nps.gov/subjects/nagpra/index.htm>.

¹⁸ The Association on American Indian Affairs. (2021). *Red Hoop Talk EP 61: SUZAN SHOWN HARJO, Cheyenne & Hodulgee Muscogee*. [YouTube]. <https://www.youtube.com/watch?v=MzSy4NDceGE>.

¹⁹ U.N. (2005).

²⁰ *Executive Office*. (May 24, 1996). Indian Sacred Sites. *Executive Order 13007*. <https://www.govinfo.gov/content/pkg/FR-1996-05-29/pdf/96-13597.pdf>.

While narrowly defined by the U.S. government, to Indigenous peoples, sacred sites can be identifiable natural features, geographical areas, or man-made structures. More broadly, a sacred site may be something intangible; if in many Indigenous cultures everything has spirit, and those spirits must be respected and venerated, then sacred sites are not relegated to ‘special’ things or places, but to the broader context of spiritual beings.²¹

For a more in-depth look at western definitions of sacred sites, please see The Gaia Foundation’s Report, [Sacred Sites: An Overview](#) and IUCN’s [Sacred Natural Sites: Guidelines for Protected Area Managers](#).

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Self-determination

The right of a people to determine their own destiny. Self-determination is protected in the [United Nations charter](#) as well as the [International Covenant on Civil and Political Rights](#)²², however, the right of self-determination for Indigenous people has not been protected in the United States.

*In practice, “...while Indigenous Peoples have the right to be consulted, Indigenous Peoples do not have veto power over unwanted government or corporate land use, mineral extractions, and are not compensated for their land and mineral wealth losses. In effect, the (UN) Declaration and supporting international laws restrict indigenous self-determination to cultural and social issues, but leave the land, resources, and government-to-government relations firmly in the hands of nation-states.”*²³ – Duane Champagne (Turtle Mountain Chippewa), Professor Emeritus - UCLA Law

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Species Co-Management

The management of species by both state or federal agencies and tribal authorities and programs working towards improved species health, population, and conservation outcomes.

For examples of Federal/Indigenous species co-management, visit NOAA’s page on [Co-Management of Marine Mammals in Alaska](#).

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Spirit Easement

According to the Methow Conservancy, a “legal easement that permanently runs with the land that acknowledges that a property is open and welcoming to all spirits of a tribe’s deceased peoples, and that as current landowners, with a good heart, you welcome those spirits to access, inhabit, or use in any other way this property as part of their Spirit Homeland.” [Methow Spirit Easement](#)

²¹ King, Thomas. (2002). "Sacred Sites" Protection: Be Careful What You Ask For. *SacredLand.org*. [blog] https://sacredland.org/wp-content/uploads/2017/07/Thomas_King-1.pdf.

²² United Nations Human Rights Office of the High Commissioner.

²³ Duane Champagne, “What Is Indigenous Self-Determination and When Does It Apply?,” *Indian Country Today*, accessed November 18, 2021, <https://indiancountrytoday.com/archive/what-is-indigenous-self-determination-and-when-does-it-apply>.

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Tribal National Parks

In the U.S., an area typically within tribal trust boundaries that is set aside by and run by a Native Nation with the general purpose of maintaining the “sustainability of the ecosystems necessary to support the aboriginal or treaty rights.”²⁴ The concept of Tribal National Parks is still new, with few examples and a wide definition.

The Navajo Nation Parks & Recreation Department manages several Tribal National Parks in the American southwest and describes their work as: *“Our Mission is to protect, preserve and manage tribal parks, monuments and recreation areas for the perpetual enjoyment and benefit of the Navajo Nation – the spectacular landscapes, buttes, canyons, clean air, diversity of plants and wildlife, and areas of beauty and solitude.”*²⁵

To read more on Tribal National Parks, see: [Investigation of the Tribal Park Concept and Opportunities for the Blackfeet Nation](#) and [How B.C.’s First Nations are taking charge with tribal parks.](#)

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Tribal Sovereignty

Sovereignty is the authority of a state to govern itself.

Tribal sovereignty pre-dates colonization and the formation of the United States. This inherent sovereignty was swiftly and systematically eroded through the decimation of Indigenous peoples and their removal from their homelands that came with colonization.

Through a series of court actions and legislation, Native Nations have clawed back some aspects of sovereignty, and are considered “domestic, dependent nations” *Cherokee Nation v. Georgia* (1831), that are able to “establish their own form of government, determine membership requirements, enact legislation and establish law enforcement and court systems”²⁶ under U.S. federal law. However, this ‘legal’ tribal sovereignty hinges on federal recognition of a tribe and is based on the continuation of colonization. Meanwhile, there are ongoing struggles for non-federally recognized tribes to regain their federal recognition and sovereign status.

Furthermore, some scholars differentiate between tribal sovereignty and Indigenous sovereignty. In his critical review on Indigenous sovereignty, Rashwet Shrinkhal asserts that “indigenous sovereignty is an attempt towards claiming autonomy and legitimacy as sovereign

²⁴ Gilchrist, Emma. (March 31st 2016). *How B.C.’s First Nations Are Taking Charge with Tribal Parks*. Canada’s National Observer. <https://www.nationalobserver.com/2016/03/31/news/how-bc%E2%80%99s-first-nations-are-taking-charge-tribal-parks>.

²⁵ Navajo Nation Parks & Recreation. (n.d.) Monument Valley Navajo Tribal Park. [webpage] *Navajo Nation Parks & Recreation*. <https://navajonationparks.org/tribal-parks/monument-valley/>

²⁶ National Conference of State Legislatures. (n.d.) *An Issue of Sovereignty*. [webpage]. National Conference of State Legislatures. <https://www.ncsl.org/legislators-staff/legislators/quad-caucus/an-issue-of-sovereignty.aspx>

authority within the realm of State. It aims to perpetuate notion of cultural and legal pluralism. It is source for indigenous people's right to self-determination."²⁷

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Trust Obligation

According to the Bureau of Indian Affairs:

"The federal Indian trust responsibility is a legal obligation under which the United States "has charged itself with moral obligations of the highest responsibility and trust" toward Indian tribes (*Seminole Nation v. United States*, 1942). This obligation was first discussed by Chief Justice John Marshall in *Cherokee Nation v. Georgia* (1831). Over the years, the trust doctrine has been at the center of numerous other Supreme Court cases, thus making it one of the most important principles in federal Indian law.

The federal Indian trust responsibility is also a legally enforceable fiduciary obligation on the part of the United States to protect tribal treaty rights, lands, assets, and resources, as well as a duty to carry out the mandates of federal law with respect to American Indian and Alaska Native tribes and villages. In several cases discussing the trust responsibility, the Supreme Court has used language suggesting that it entails legal duties, moral obligations, and the fulfillment of understandings and expectations that have arisen over the entire course of the relationship between the United States and the federally recognized tribes."²⁸

This Trust obligation and responsibility has not been fulfilled.

²⁷ Shrinkhal, Rashwet. (2021). "Indigenous sovereignty" and right to self-determination in international law: a critical appraisal. *AlterNative*. 17(1), 71-82. <https://journals.sagepub.com/doi/pdf/10.1177/1177180121994681>

²⁸ Bureau of Indian Affairs. (n.d.) Frequently Asked Questions. *Indian Affairs*. <https://www.bia.gov/frequently-asked-questions>

APPENDIX B

Additional Resources

Books

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Dunbar-Ortiz, R. (2021). *Not a Nation of Immigrants: Settler Colonialism, White Supremacy, and a History of Erasure and Exclusion*. Beacon Press.

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Gould, C. *#Landback, and the Art of Indigenous Land Trusts* [Audio Podcast Episode]. Nihizí, Our Voices: An Indigenous Solutions Podcast.

Manning, S. S. (Host). (2018-Present). *While Indigenous* [Audio podcast]. NDN Collective.

Tools & Toolkits

10 Things to Look for Mapping Cultural Values, by the *Yellowhead Institute*. A resource guide

for Native Nations looking to map cultural values on Native Lands.

Cultural Respect and Use Agreement Annotated Template for Maine, from the *State of Maine*.

Federal Land Manager Environmental Database, by *FED: Colorado State*. An extensive database of all lands that are owned or administered by the Federal Government.

Global Platform of Indigenous and Community Lands, by *LandMark*. A global platform of Indigenous and community lands, provides maps and other critical information on these lands.

Land Reparations and Indigenous Solidarity Toolkit by *Resource Generation*. A variety of resources to aid land back partners in taking action towards land reparations.

LANDBACK U by *NDN Collective*. A “free comprehensive online learning platform to engage in political education and discussions on topics critical to (the) movement to reclaim land and (the) relationship to land.”

Native Lands, by *Native Land Digital*. An interactive map of historical and contemporary Indigenous land bases across the world.

Rematriation Resource Guide: Returning Indigenous Lands to Indigenous Hands, by *Sogorea Te’ Land Trust*. A toolkit to help Native Nations and their networks start the rematriation process.

The Honor Tax Project, by *The Seventh Generation Fund for Indian Development*. A toolkit to start an honor tax project in your area.

Videos

House Natural Resources Committee Democrats. (2022, March 8). **Examining the History of Federal Lands and the Development of Tribal Co-Management** [Video]. YouTube.

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APPENDIX C

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