

# Event 3: Individual Presentations from Speakers on Land Back and Indigenous Stewardship

*Moderators: Natalie Friedberg\**

*Speakers: Matt Simmons,\*\* Curtis Vandermolen,\*\*\* & Michael Wilcox\*\*\*\**

## INTRODUCTION

**Natalie:** Everybody, we're going to be starting the second half of the ELQ Symposium. We've got a couple really exciting presentations coming up, starting with Matt Simmons from the Environmental Protection Information Center. We're really excited he's here.

Matt graduated from UCLA Law School in May 2020 with specializations in environmental law and public interest law. While there, Matt served as the President of the Environmental Law Society, participated in the Frank G. Wells Environmental Law Clinic, and completed a summer internship at the National Resources Defense Council and [Environmental Protection Information Center] (EPIC). Matt is focused on fighting climate change at the local level, and also does land management advocacy, as we're going to see in a minute.

## ENVIRONMENTAL PROTECTION INFORMATION CENTER

**Matt Simmons:** Hi everyone. First, I just want to say how honored I am to be here. I'm going to start off with a video that talks about this issue, because I can talk about this issue, but I can't fully represent what this place means to the advocates involved. Before I play the video, I want to say a disclaimer. My wife is Pueblo. She's from the Pueblo Laguna in New Mexico. The first time I ever visited the reservation, it was for a feast day, and there was going to be tribal dancers. She said, "Give me your phone." I said, "Why?" She said, "Because you can't have your phone out at all for this whole day." I was like, "I'm not going to record or anything." She was like, "You can't take it out to text. You can't

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take it out to check your email. You've got to just leave your phone here, and then we'll go to the feast day."

The reason I'm saying this is all the tribal dancers in this video consented to be filmed. They wanted this video shown to raise awareness about this. I like to use showing it as an opportunity to tell people, don't record people without their permission.

JACKSON DEMONSTRATION STATE FOREST & ENVIRONMENTAL JUSTICE

**Video Speaker:** It's sacred. Over here on Caspar, we have large cultural sites. They want to go and cut trees down in April, I believe, right? We need to protect our cultural sites.

[tribal songs]

**Video Speaker:** When I look out there, I go, do I allow this to happen in Caspar 500 [Caspar Timber Harvest Plan]? Do we allow this to happen in Caspar 500? We're witnesses.

**People:** No.

**Video Speaker:** Once you get out here, you're going to see it if you haven't already.

**Video Speaker:** The basis of this Indigenous perspective is: you'll never move forward. If all you're doing is taking, you're never going to get where you want to be, right? You've got to go put it back.

[tribal songs]

**Video Speaker:** Now we've got to go figure out how to protect what's left.

[tribal songs]

**Video Speaker:** Come down, come closer, so you can hear the story.

**Video Speaker:** Today, we're here for Mother Earth. Today, we're here for the plant nation and the trees. Today, we're here to cry out and to sing our songs and to pray.

[tribal songs]

**Video Speaker:** This is my favorite elder on Earth right here: my aunt Susie. Ninety-seven years. Her mother, her grandfather, her grandmother. They know what it was like before this. Too many of us don't know anymore. It's called disconnection, but they know it. It's important for everybody to understand their legacy. For the first time, we're documenting to tell the world and thank you, dancers and singers. These people have come from far away to share the connection to this Earth with you.

**Video Speaker:** Our reservation from Round Valley. Is there anybody else, whatever rezes are here? Wanderinas in the house. Caddos. Anyone else?

**People:** Graton. Sherwood.

**Video Speaker:** Graton, Sherwood.

**Video Speaker:** Freddie Rancheria.

**Video Speaker:** For the rest of us in California, Jackson Demonstration Forest is really important. It's really important for us because how they mess up here, is how they mess up everywhere. Policies that are set in place, in part come

from here, and they're not good. This is the force that we used to say that we can do this up in Yurok Territory. We already did the vetting; we already did the studies. This works. I'll say from my experience that it doesn't matter if it's the Forest Service, CAL FIRE, an [Non-Governmental Organization] (NGO), or a private group; if tribes aren't involved in the decision making, it never ends up good.

We've got good land, however, man. This is good land. It's good territory. Let's make it a demonstration of traditional management when you do it holistically on a watershed level like we used to.

All we're asking for is a moratorium on logging in the Jackson Demonstration State Forest until the tribes can sit with the agencies to determine what is right.

**Matt:** I haven't watched that video in a little while. Jackson Demonstration State Forest. I'm going to try to orient you to this place. On the map, you can see where we're at. We're in Mendocino County. It's about two and a half hours north of here. I highly recommend folks drive up and give us a visit. Jackson is a really unique place in California in terms of its legal status.

Most forests in California, I'd say they fall into three big buckets: there's federal forests, there's privately owned timber forests, and then there's our state and national parks, which are conserved. Jackson is a state forest. It's managed by CAL FIRE. They rebranded to CAL FIRE, but their real name is the California Department of Forestry and Fire Protection. It's managed as a commercial timberland with the express purpose of demonstrating commercial timber. The Organic Act for Jackson was written in 1947, and it says, "Thou shalt log our state forests," and demonstrates how to do logging to the timber companies of California.

EPIC has been involved in a campaign and a coalition trying to change the management of Jackson Demonstration State Forests. I actually really love the way the vice chair put it in the video. He said, "Let's demonstrate traditional management." Sometimes, we get accused of not wanting any sort of management in the forest to make this like a wilderness area, and that's not what we're advocating for. We're advocating for traditional management, restorative management. There can still be logging; it just has to be done with that sort of restorative mindset instead of a commercial mindset.

This is a photo of coastal redwoods that were cut down in 2021 as part of the Red Tail Timber Harvest Plan. Those are state of California trees cut down by CAL FIRE to demonstrate forestry. I would ask the question, don't we know how to cut down big trees? Isn't that what we've been doing for a long time? I will say there is research done in Jackson, but it is often a percentage of the total plan. One timber harvest plan I looked at, it was a 500-acre plan, and ten acres of it was a demonstration of a new logging technique. Then 490 acres of it were just traditional logging: the biggest trees you can in that section. If you have 2 percent of the plan demonstrating something, I think it's maybe time for an update to the mandate and to the rules around logging in this forest.

This is just a map of past timber harvests in Jackson. It's color-coded, and there's a lot of information up there right now. You can see that the state has been routinely moving through the forest and logging on a time frame like a private timber company. For those who aren't familiar, most of our private timber companies in California log on thirty- or forty-year rotations. They go and cut down trees, and then they come back again thirty years later.

CAL FIRE is a little bit less aggressive than some of its neighboring private timber companies. You can actually see that with LiDAR on the map that Jackson is a healthier forest with some older trees. They are still logging for profit and for a commercial purpose. These red timber harvest plans on the western side of the forest were all proposed in 2020 and kicked off this current round of activism around Jackson, although it's not at all the first time that this has happened. Something I want to talk about is how this campaign is different because it is tribally led and in partnership with Indigenous people.

This is just a good slide demonstrating what different management methods are leading to in the forest. On the left is actually state parks land, which has had a much lighter management touch. On the right, you have CAL FIRE state forest land, which has been logged repeatedly, and so you get smaller trees, more debris on the ground, which is a fire risk, and lots of other problems.

Just to give a sense, again, of what the coalition has been asking for, it's a new mandate for the forest. Let's edit that 1947 Organic Act and change it just from saying "demonstrate commercial logging." A moratorium on logging activities until we can get there. Equal co-management with any local tribes who are interested. Respect and protection of cultural resources in the forest, and to conserve Jackson Demonstration State Forest under the "30 by 30" goal.

Raise your hands, who's familiar with "30 by 30"? Great. California, awesomely, has a goal of conserving 30 percent of the state by 2030. I think that's wonderful, and I think that they've got state-owned land with coast redwoods and tribes who are interested in co-managing it, where this would be a fantastic place to start. As I said, this campaign really kicked off again in 2020. We're trying to make it different from traditional conservation campaigns and even past campaigns in Jackson. We're doing that in several ways.

First, we're really emphasizing tribal leadership. You saw these folks in the video, but that's Chairman Michael Hunter from the Coyote Valley Band of Pomo Indians. He has taken on a really central role in this campaign and is pushing for change. That's his mom, Priscilla Hunter, standing next to him in the red jacket. There's a lot of other prominent tribal leaders who've spoken out for Jackson. We're trying to have this campaign be grassroots-led. I'm an attorney. I work for an environmental nonprofit. If it's just me going to meetings and talking about these issues, we're not doing this right. We're trying to have this be a really bottom-up, grassroots-led campaign with not just tribal nations but also local folks who live by the forest and community members. Everyone's invited.

We've emphasized a diverse coalition of folks who all agree that management needs to change in Jackson. It's tribal representatives. One of the

tribal representatives calls them the landed gentry of the coast, so people who own land next to the forest over on the coastal side. We've got a climate scientist. Just trying to be as welcoming and diverse as possible in our coalition, instead of the framework people are probably familiar with of a very white-led conservation movement.

Part of what that has led to is a real emphasis on cultural uses, so not just talking about the big trees, although I've got to say, I love the big trees, but also talking about coho salmon, which are endangered. In California's coho recovery map, the Noyo River, which runs through Jackson, is listed as a critical place of opportunity for restoration. Yet, CAL FIRE continues to log there, which we know impacts water quality. Basket weaving materials, tons of acorns, which are a traditional food source. There are so many cultural resources that are made less available by commercial logging, and so we're trying to emphasize those uses in the forest.

Another really important piece of this is protecting cultural sites and sacred sites in the forest. During the California genocide, Jackson was a refuge place for California Native Americans. It was forested and dark, and so they could hide there. Priscilla Hunter's grandmother hid in Jackson Demonstration State Forest, what would later become Jackson Demonstration State Forest, during the California genocide. This is relatively recent history that we are still struggling with the consequences of. Jackson has a lot of really important sacred sites.

CAL FIRE has an archaeology program. Under [California Environmental Quality Act] (CEQA), they have to survey for archaeological resources prior to logging. This photo in the corner here is of a charmstone. It's famous because CAL FIRE had invited several archaeology students out to the forest to train them on how to look for charmstones. They were walking down a dirt path that had been made by a bulldozer to get to a future logging area. One of the students said, "Hey, what's this?" On the dirt path that had already been run over with a bulldozer was that charmstone. If the bulldozers had come back again, it could have been lost forever. You can imagine what it's like looking for archaeological resources in a dense, wooded area like Jackson. One of the things we've been really fighting for is more cultural monitoring and slowing down the process of timber harvest plans so that these things can be really protected.

What tactics have we been using to support Jackson Demonstration State Forest? I'm a lawyer. CEQA is my bread and butter to some extent. Before this campaign started, timber harvest plans in Jackson were getting zero to one public comment. Now, they get hundreds every time they propose any sort of timber harvest plan. Threats of litigation. Thankfully, since this campaign started, CAL FIRE has not approved any new timber harvest plans. I think that because they know that if they did, they would likely face litigation. Tribal consultation. Tribes are sovereign nations who have a right to be consulted on state decisions that impact their ancestral lands, and so when working with tribes, we've tried to come to agreements with CAL FIRE about how the land should be managed. Secretary Crowfoot met directly with Chairman Hunter several times, and they

weren't able to reach an agreement, but I am glad that they were able to sit down in the same room and at least talk about these issues.

Direct action. This is the area of this campaign that I had the least to do with, but some people went out and did tree sits and chained themselves to fences, and did everything they could to stop logging from proceeding. We had a media strategy, and we tried to really emphasize the cultural aspects of the forest and not emphasize the traditional conservation aspects of the forest, and all of this has led to success.

These coastal redwoods are actually second-growth coast redwoods, which I think is so crazy. They're 130-year-old redwoods. They were marked by CAL FIRE to log in 2020, and the guy in this photo, Chad, called me up and said, "Hey man, they're going to cut some really big trees down in the forest. What are you guys doing about this?" I was like, "Oh my god," and the plan had already been approved. It had already gone through CEQA, and the environmental regulations that are supposed to protect us had all said, "Go ahead and cut those trees down," but through, I think, mostly tribal consultation, CAL FIRE backed down and decided to unmark those trees. Now, they all have a black ring around them, which means that you aren't allowed to cut those trees down.

Coastal redwoods can live 2,000 years. These are 150-year-old trees, which were going to get cut down essentially in their infancy, and they'll now hopefully live much, much longer.

We've also had some political wins. The California Democratic Party unanimously endorsed the tribal co-management in their state Democratic Party resolution. Legislators have also supported co-management and a temporary pause on logging while these things are being worked out. There are more wins that we need in the future. We still need legislation to change that Organic Act for Jackson, and if you want to support us, I've got a little square of it, or you can go to [SaveJackson.org](http://SaveJackson.org). We have a petition that lays out the things we're asking for from the state.

Okay. That's my presentation, and I was told I should take questions later, so I will do that, but thank you all for listening.

**Natalie:** Thank you so much, Matt. I'm sure we could talk about this for a long time, so you should stop by Matt's breakout room afterwards and ask him more about tactics for conservation movements.

#### INCORPORATING TRADITIONAL ECOLOGICAL KNOWLEDGE INTO ENVIRONMENTAL DECISION MAKING

**Natalie:** I'm really excited to announce the next person, Curtis Vandermolen. Curtis is going to be talking about CEQA and traditional ecological knowledge. He is an expert in federal Indian law, and since we're a little short on time, I'm going to let him tell the rest.

**Curtis Vandermolen:** I think I might be a little too tall for the microphone stand. Good afternoon, all. Thank you. Thank you for being here after lunch. I am actually very excited, especially with the presentation so far, because they've

pulled on a lot of the strings of the things that I wanted to talk about, which means I can get through a whole lot of material, hopefully, a little bit faster for you. I'm going to try to keep the pace up and keep on time.

I do want to talk about incorporating traditional ecological knowledge into environmental decision making. For short, we refer to this as TEK. I'm an attorney with Kronick Moskovitz Tiedemann & Girard in Sacramento. I'm part of the Natural Resources Practice Group. I've got five years of work in federal, state, and tribal Indigenous law. I graduated from George School of Law with my water environment certification. I've written two publications on TEK in the California Indian Law Association Journal. Prior to my law career, I had thirteen years of state-level policy experience in the state legislature and the administration.

Today, here is just a brief overview of TEK. For those of you who don't know what it is, I want to touch on TEK being scientific and expert evidence, give you an example in practice, and then go into more of the "how do we put this into play in CEQA and [National Environmental Policy Act] (NEPA)?" If I don't run out of time, after talking about consequences, I'll give you some closing remarks and a real-world example from a few years ago in my time in Wisconsin.

TEK is traditional knowledge that's passed a lot of times through storytelling, through cultural practices, through doing. It's not written in books; it's not bullet-pointed for anybody. I think of it as conceptually similar to fables. You may have had Aesop's Fables, or Mother Grimm read to you when you were a kid, and you learned a lesson from those, whether you knew it or not. You learned how to behave in society. TEK is similar—but exponentially more informative. It's got a lot of information about how to behave, how to do things, how to live in the right way. Bimaadiziwin.

Scientific evidence. You learned in elementary school and in high school about the scientific method. We've got questions, hypotheses, experiments, data, and conclusions. Indigenous communities have spent thousands of years on this land doing exactly those steps. Western cultures doing Western studies that are published in journals have hundreds of years on this land doing exactly those steps. To discount that traditional knowledge just because of the way it is kept and the way it is passed is disrespectful, and it doesn't recognize that this is scientific evidence.

The White House guidance in 2022 finally started to put this together. They put out the guidance that says Indigenous knowledge is systematic, explains ways of knowing. It's got the attributes of observation, innovation, and verification through repetition, which are all parts of the scientific method. It's derived from direct contact. You're talking about new inputs and evolution of scientific experience, and you're talking about curiosity-driven investigations. That's the scientific method. This is scientific expert evidence.

In California, it's very similar, although, unfortunately, tribal knowledge is limited to this little area of CEQA. If it's going to have an environmental impact, the tribes might have knowledge. Everywhere else, it doesn't matter. Under

CEQA, the legislature has said that traditional knowledge is expertise concerning tribal cultural resources. That's expert knowledge. In the technical guidance from OPR, we're including as expert evidence: elder testimony, oral history, testimony from experts that the tribes say are experts, and testimony from the tribes' [Tribal Historic Preservation Officer] (THPO). Those are all methods of transmitting information orally. These are in addition to the written forms that are also allowed under CEQA.

In practice, fire management. I think you did a fire management seminar last time, and this builds on that. Fire suppression was actually the dominant federal and state policy for 150 years. California started it; we outlawed Indigenous fire management 150 years ago, or in 1850, over 150 years ago. The penalty if an Indigenous person set a fire was: they went to the court, they got a fine, and then a white person could buy their fine and make them work for them. Federal policy and other state policies added on to that after the Weeks Act in 1911 and really ingrained that fire suppression management into our policies. We found out that it didn't work—simply, flat out, did not work.

Before I go on to this slide, I want to tell you an Indigenous story that was told to me by a Navajo elder. He gave me permission to share it with people. It's a very simple way to start understanding how TEK connects to this other evidence that we have. Before people were on the Earth, the animals behaved a lot more like people did. They communicated with each other, they talked with each other, they lived in communities, they worked together. Before there was fire on Earth, the sun would rise, and the animals would have warmth, and the sun would set in the evenings, and the animals would be cold, and they'd be huddled together.

One day, Coyote, who's the trickster and the master of disguises, he says, "I think we should go steal part of the sun and bring it to Earth, so we can stay warm at night." The other animals were like, "Yes, whatever, go ahead and try." Coyote, before the sun came up the next day, he ran about a third of the way up the mountain. Before the sun comes up, the firekeepers come out, and they stand on the ridge of the mountain. They look left, and they look right, and they make sure there's no threats to the sun, and they tell the sun that the sun can come up. Coyote ran up there, and he laid down, and he disguised himself as a dead possum. The firekeepers came out, and they looked left, they looked right, they saw a dead possum, and they told the sun that the sun could come up. Which worked great. The day went through the day, and the sun went down, and Coyote jumped up, and he ran about another third of the way up the mountain, laid down, and disguised himself as a dead possum. Same thing.

The firekeepers came out, and they looked left, and they looked right. They saw a dead possum, and they told the sun the sun could come up. Coyote's like, "Great, we're on target. This is working." Before the sun came up the next day, he ran almost all the way to the top of the mountain, and he laid down, and disguised himself as a dead possum. He noticed, when the firekeepers came out, that one of them was lazy. He looked left, and he looked right, and then he just settled back and went to sleep. Just as the sun started to rise, Coyote jumped up,

ran through the hole left by this lazy firekeeper, grabbed a piece of the sun, and started running down the mountain.

He's running down the mountain, and it's really hot, and he can't hold onto it. Raven comes by. Raven used to have a beautiful white cloak. Raven grabbed this piece of the sun and started flying down the mountain. It was so hot that it burnt all the feathers black, and he couldn't hold onto it anymore. Raven dropped it.

Badger grabbed onto it. Badger started running down the mountain. It was so hot that it left stripes down Badger's back. Finally, he couldn't hold onto it anymore. Raccoon came along and grabbed the piece of the sun and was running down the mountain, and it left this beautiful mask across Raccoon's face. He got down to the bottom, and Toad said, "I have an idea. Give it to me. I'll jump in the water, and maybe the water will protect us from the heat of the sun." Toad grabbed the piece of the sun, jumped in the water, but it was still so hot, the water didn't help, and it started blistering his skin, and he had to come up. Which is when Tree spoke up. Tree said, "Silly animals. Give the sun to me. I've got a thick bark, it'll protect me. I will hold it for you." That's why today, the fire lives in the trees.

It's an entertaining story. It's a story to remember. It's a story to think about. Every time I hear it, every time I tell it, every time I think about it, I learn something new from that. In fact, just yesterday, when I was preparing for this, I grabbed a new piece of this. There are some really simple places to start. First, do we have any doubt that fire is kept in the trees? Second, is it hard to smother a natural fire with water? You've got a forest fire, and you dump water on it. Is it going to do a whole lot? Third, maybe the most important and easiest one is, does tree bark protect trees from naturally managed ecosystem fire? We clearly know the answer to that is yes. Mature trees are protected by their bark. This is scientific knowledge developed over time, understood, and passed on through stories and practices and traditions.

Now, the White House guidance requires the federal government to use TEK in the Endangered Species Act, National Environmental Policy Act, Marine Mammal Protection Act, Fishery Act, National Historic Preservation Act, and [Native American Graves Protection and Repatriation Act] (NAGPRA), and this is not a comprehensive list. What these do have in common is: any time you're touching the environment, you need to go ask tribes what they think. You need to go and get that information and ask them to share it with you.

There are federal policies also. Section 106 of the National Historic Preservation Act, NAGPRA, Archaeological Resources, there are presidential executive orders that require tribal consultation and other agency policies as well. In California, in some respects, we've done a better job. We've done a better job here because CEQA requires that for any discretionary public agency decision that's going to affect the environment, you reach out to tribes that are culturally and traditionally affiliated and ask them if they will share their knowledge with you.

Now, that includes 110 federally recognized tribes. It includes tribes that are not necessarily known or located in the state. Think about the Modoc. Modoc tribe was in northern California until they were put on cattle cars and shipped to Oklahoma, which means they are traditionally and culturally affiliated with parts of California. You may have to reach out beyond that. It includes, because of the way California law is written, approximately forty-five state-recognized tribes that are not recognized by the federal government.

Now, what exactly does CEQA require? The lead agency must consult with a California Native American tribe that asks to engage in consultation. That consultation must continue. This isn't just "Go and sit down with them for an hour, check the box, put it in your document, and move on." The consultation cannot end until one of two conditions. You either reach an agreement with the Tribe, or you determine after good faith effort that it's impossible to reach an agreement. That's a very black-and-white question. There's a little gray area for us lawyers on, "Is it impossible to reach an agreement or not?" But this is a very strong policy that says, "Go out, ask them to share their knowledge if they want to, keep talking about it until you guys figure it out." The lead agency must include mitigation measures that are agreed on between the agency and the Tribe in consultation. Even if no tribe consults, or you're not adopting mitigation measures, there are specific pieces of consideration where you have to look for mitigation measures for any impact on a tribal cultural resource.

What I haven't talked about yet is the expansive definition of tribal cultural resources, and that's going to take me way over time, so I encourage you to look at CEQA, at what a tribal cultural resource is. It's extremely expansive, especially compared to NEPA.

I do want to highlight a couple of really important points on this. If you're working for an agency or a private individual, tribal consultation is by invitation. Tribes are sovereign nations. The state of California can't make them come and provide their knowledge, so be respectful. Include appropriate level decision-makers when you go and ask them to consult. If they're going to send their elected officials to give you information about their knowledge and their culture, and you're going to send your third-level staff to go meet with them, that's very disrespectful. Think about those levels of consultation.

Recognize that a lot of California Native American tribes, because of their size and because of our history, have very limited but growing governmental capacity. There may be a lot of agency action happening that they'd like to give you a lot of information about, but they can't consult on everything that you're doing. Recognize that there's a missed opportunity there, and it's not their fault. Also, recognize that there's historical trauma to get over.

The second major piece is that TEK is high-context. That consultation is going to be based on trust. That transmission of oral knowledge, tradition, history, there's a lot of information there, and there's a particular way that they're accustomed to passing it, a particular way that it's kept. Just like, especially for you law students, when your professor says, "Hey, take all this information and try to put it into a five-page paper," if you're going to take traditional knowledge

and try to put it into five bullet points, it's not going to work. Set aside enough time to do a meaningful, full consultation. Be respectful, and recognize that your project proponent, if it's a private entity and you're the public agency, they may want to be in that meeting, but they're not entitled to be. It's that sovereign nation that has to say, yes, we're going to share our knowledge not only with you—the government—but also with your private project proponent, which means there has to be trust. If the Tribe doesn't trust the project proponent, either because of past history or lack of knowledge, you're probably going to miss opportunities to have a better project.

Now, getting to the consequences. For those of you who are familiar with CEQA—which most of the people in this room—it's powerful. There's a lot of things you can do with CEQA. Part of the problem that we have with tribal consultation right now is AB 52 is still a fairly new law. It was passed in 2014. There's no decisions that define the scope of tribal consultation. There's no decisions that define whether an agency adequately considered traditional ecological knowledge.

My firm is currently in litigation on behalf of the Koi Nation against the City of Clear Lake, which may answer one or both of those questions, or neither, or more. I'm not going to talk about it. It's a current litigation that's ongoing. There are steps being taken, not only to enhance consultation, but also to define what those limits are when tribes are being met with resistance. CEQA litigation causes substantial delays and increases project costs. Those of you who've looked into CEQA, recognize that the standard is fairly low for most of the things happening in CEQA—it's a fair argument.

Did I give you enough information that you think I can make a fair argument that that's going to have an impact on my tribal cultural resource? That's a low standard that a lot of agencies don't want to recognize. Part of the problem is they don't want to recognize the expertise held by tribal elders because it's orally transmitted. They don't want to see that TEK is scientific and expert evidence, even though the statute says that it is.

The other part of it is if you did a tribal consultation and they told you information about potential impacts, and you didn't include that in your environmental document, you probably have an incomplete environmental document, and you may end up being vacated on CEQA review. It's important to take these things into strong consideration. Tribes are starting to be able to have the capacity to work more fully with it.

#### MUWEKMA OHLONE PRESERVATION TRUST

**Natalie:** All right. We have a presentation from Michael Wilcox, who's the historic THPO for the Muwekma Ohlone Tribe of the San Francisco Bay Area. He is on the board of the Muwekma Ohlone Preservation Trust and a professor of Archaeology at Stanford. He's going to talk to us a little bit about his work. I'm really excited to hear about it.

**Michael Wilcox:** I thought I would start with introductions. My name is Michael Wilcox. I'm the child of Ronald Wilcox and Eileen O'Connor. My dad's father is Elmore Wilcox. Elmore's mother is Rosa Carvajal. Rosa was born at Yuma, Arizona on the reservation in 1895. I have connections through ancestry to spaces where Native people were removed because of water policies. Although I'm not enrolled in the Tribe, I have ancestry. Those connections inform the work that I do today in trying to recover histories that people have not been taught. I teach Native American Studies, Anthropology, and Archeology, and I'm an advocate for Native peoples in the ways that are appropriate when I find those spaces.

Most recently, because I work at Stanford University, I have the opportunity to work with Native peoples, Native students who come. There's a large population of about 400 students there. I'm very invested in creating opportunities of service for people in Stanford to work with the tribe. That's the basis for this talk today. I'm going to start with a little presentation from an organization called huiMAU. HuiMAU is a nonprofit organization that was created in, I think, 2010 by a student of mine who was interested in recovering the history of his family on the Big Island of Hawai'i on the coastline of Hāmākua.

I didn't know anything about Hawai'i. He invited me to come. In that process, I was exposed to a new and interesting way of recovering and restoring the relationships between people and land. In a space where it's a lot like California in that there are landless ethnic groups. The Hawaiian people do not have tribal territories, so they have the same rights as citizens of the state, but no others aside from that. That parallels to the Muwekma Ohlone situation. As a non-federally recognized tribe, they share that story with about half of the 200 or so tribes in California.

Their interests and their needs are unique. I've learned a lot from working with Hawaiian groups in terms of how they use traditional ecological knowledge, storytelling, it's called mo'olelo, and their relationship to 'āina-based education, which is land-based education, is much more sophisticated than many of the tribal services that are offered in California, not because people don't want to, but because the knowledge hasn't really been there. The structures about how to do this work hasn't been there. I'm going to show you this very quick thing, and then I'm going to talk a little bit about heritage management. As an archaeologist, that's what I do. It's a more broadly understood relationship to land.

I'm an archaeologist, but I'm anti-archaeologist. I'm what's called an Indigenous archaeologist. That field developed in 1990 as a result of NAGPRA being passed, where universities said, "Well, we're required to consult. Maybe we should bring in some Native students into our institution." They started to do that, recruit people. I wasn't recruited, but I took advantage of the opportunities that were there to push archaeology and anthropology to do things that it didn't want to do yet. I'm a shit disturber, professionally.

**Video Speaker:** Guided by the mo‘olelo of our Kūpuna and inspired by visions of abundant futures for our keiki, Hui Mālama i ke Ala ‘Ūlili or huiMAU was founded in 2011 by kuleana-driven ‘ohana of Koholālele and Pa‘auilo in Hāmākua, here on Hawai‘i Island. Our mission is to re-establish the systems that sustain our community through place-based educational initiatives and ‘āina-centered practices that cultivate abundance, regenerate responsibilities, and promote collective health and well-being.

Our vision is noho papa Hāmākua, a future in which Hāmākua Hikina fosters the growth of communities of aloha ‘āina that empower ‘ohana with the capacity to noho Papa, to live and thrive in this place for generations, with deep aloha and kuleana for the ‘āina and ‘ohana to whom we belong, and with great expertise in maintaining and regenerating the systems that feed us physically, intellectually, and spiritually. This is sustainability. This is the kuleana that our generation carries on behalf of all the generations of this place yet to come, to strive towards a state of pono in which the systems that generate abundance and well-being thrive in balance, not just over the span of one lifetime, but over multiple generations.

As our Hui has engaged in the work of ‘āina restoration, Hawaiian culture-based education, food cultivation, and distribution over the past decade, we are encouraged by the growth of our ‘āina and the community of aloha ‘āina that has grown with us. With each ‘ulu tree planted and each keiki inspired to take on the kuleana of caring for ‘āina, this home of ours in Hāmākua is beginning to look and feel a lot more like a place that our Kūpuna would recognize, and that our descendants seventy-five years and seventy-five generations from now will be proud to call their home as well.

**Michael:** I’ll stop it there. That’s the position, the thing that I’m aiming towards in working with the Tribe. Having learned about how people relate to land in different spaces that are not my Tribe, that are other Indigenous spaces, it brought my awareness of how restoration of relationship to land looks like, what it looks like. When we talk about easements, when we talk about land trusts, when we talk about giving Native people access to spaces, what for, is the question. What can we do to facilitate those relationships? Because it’s not just about being on the land, it’s about reestablishing connections. I’m going to talk a little bit about a lot of things.

We are likening the relationship to land and community with the Muwekma Ohlone Preservation Foundation. The foundation was established, I think, in 2021 from working in the foothills around Stanford campus and asking questions. Recognizing that the Amah Mutsun Land Trust was way underway, was doing fantastic things, and Muwekma didn’t have anything, I started to gather people who were interested in starting something.

We don’t know what it would look like, so we got people from POST, Peninsula Open Space Trust, Green Foothills, and the Midpeninsula Open Space District who were interested in starting something. We approached the tribe and said, “We’re interested in starting this. Are you interested?” Through

conversations over the next six months, we were able to convey what the benefits would be of a land trust. Relationships are very important, and I showed that video at the beginning because relationships between Native people and how we learn are always social transactions where knowledge is shared. It's not a commodity, but where knowledge is viewed as something that can enhance people's relationships to each other, and also to land.

I'm putting this up here. The first is the Stanford Land Acknowledgement. It sits on the land of the Muwekma Ohlone Tribe. That's the Stanford one. The one on the right is the one that it should be, which is Stanford sits on the ancestral land of the Muwekma Ohlone Tribe. This land, about 8,200 acres, is currently worth \$19 billion. We are sorry that the founder of the University, Leland Stanford, while governor of California, supported the legislation that raised the volunteer army to kill Native peoples. We also regret that although we offer preferential admissions for alumni and donors, we have chosen not to offer preferential admissions and free education to all Native students.

That usually gets a shock response from people because it's outrageous to some people, and I don't think it is. I think that's probably the most accurate and sufficient and meaningful land acknowledgment you could do. That's not on the website. Okay. Kinship. We talked about kinship a little earlier. Not a metaphor. It is a metaphor, but it is and it isn't. There's this false dichotomy between science and Indigenous people, and that creates distances that don't need to be there.

Archaeology is heritage management, so I got into archaeology because I was interested in restoring relationships and connections using archaeological evidence between tribes and landscapes. It had one objective, to make those connections. I want to use archaeology as a tool in the service of Indigenous people. Archaeology has changed from something where you collect stuff like the old Berkeley Museum model. Kroeber was responsible for a great deal of that, to including in our list of things that we do is really heritage management. That means that we're not just looking at objects or spaces, but also practices, rivers, streams, oceans, landscapes, dancing, storytelling, all those things are part of heritage.

Some of it is tangible, some of it is not tangible, intangible. When we think about this relationship between people and the land, that idea that we're kin, the idea that that's strange to people is a problem, because we are nothing but connected to the earth. Everything in my body comes from the earth. Even the air I breathe comes from the earth. The sun has been depicted as something that Native people worshiped through centuries, as some kind of childish belief system, but it is scientifically accurate to talk about the photons that come from the sun lighting onto plants, the chloroplasts creating sugars, those sugars are consumed by me, they get into my body, they're combined in my metabolism, and make me breathe and live.

That is not silly. That's science. That's the way that I want to connect, break down these artificial barriers. We're biologically, chemically, genetically, cosmologically, and environmentally connected to the earth. However, there is

something we have to work against, and that's the settler-colonial cosmology. This is just my idea, so I'm happy to be wrong, but sacredness is portable. It's located in texts that can be taken from place to place. Churches can be built in different places. That's contrasted with the sacred landscapes are places, that's contrasted with land-based practitioners whose sacred landscapes are not some hypothetical place here or there. They are right here. They're tangible, they're in this space.

Sacred landscapes are a place for, I think, settler-colonial folks, if you're part of the main three Abrahamic religions, your sacred landscape is a place you may never visit. That conditions the way that we interpret Native people's relationships to land. If you don't see it, if you don't have that relationship yourself, it's hard to imagine what that looks like. What is societal success? I teach in the School of Sustainability. I wonder what that means sometimes. If it is success, if you can look at the presence of Native people on the land for centuries, for millennia, if the metric of success is how long you can live in a space without destroying it, or at least not destroying it completely, but actually living in harmony with it, in relationship with it, that's success.

If it's consumption, creating things, buying things, then the West is the model. It doesn't seem to be working for everybody in the same way, and I call that into question about the values that we have. Values center our relationship between people and the earth. We're kin to the earth. Genetically, I'm connected to all of you. I'm connected to all living things. My genes are 25 percent banana, if you want to look at it that way. I am connected to all these—my relationships are biologically centered.

Also, we think about Indigenous relationships being grounded in this notion of the seventh generation, where I am not the focus of life in my family. I am part of a process of people who have put me into this place that I'm in, and I'm responsible to those who will come after me. People I've never met on that side and this side created a space for me, and my job is to do that. That seems silly maybe, but I know Germany has actually laws in the book that require that policy is conditioned by future generations' needs, and you have to anticipate those. That's not a strange thing.

We have this strange paradox with Native people. We're administered as part of nature, but are disassociated by policies. This is the organizational chart for the Department of Interior, Secretary of Treasury. You have all these offices. You have bugs, water, forests, fish, minerals, and Native people, right? In a weird way, why are we not in the Department of State with other governments? I'm not sure. We have this strange paradox here that exists where we're depicted as being a part of nature, and yet we're administered. Part of what created the National Parks System was the removal of Native peoples from those spaces.

That's an interesting thing. I'm not fully able to flesh that out, but I want to just plant that seed. The other dislocation, if that's not enough, is anthropology. Anthropology was created to quantify, measure, understand Native peoples using a specific methodology. The father of American anthropology, Kroeber, famously declared that the people who were constructing the estate for her

benefactor, the benefactor of Kroeber was Phoebe Apperson Hearst, and her estate on the East Bay was also the location where the Muwekma Ohlone people lived.

The Muwekma people put her estate together, and the first act that he did as one of the founding members of the Anthropology Department was to declare that group of people extinct. The relationship, this is where it says “The Costanoan group is extinct so far as all practical purposes are concerned. A few scattered individuals survived whose ancestors were once attached to the mission San Jose, San Juan Bautista, and San Carlos, but they are of mixed tribal ancestry and live lost among other Indians or obscure Mexicans.” I’m just trying to unpack that for a little while. I’m not sure what an obscure Mexican is, but that’s part of it.

Then we have the legacy of bounty lines, you probably don’t know, thank you my obscure Mexicans, my brothers out there. Bounty lines are a part of this process too, because the state of California did award bounty lines to those who participated in Indian wars, and they’re not far away. They’re right here near Stanford. One, two, three. Those are legacies of this process of colonization that we have to consider when we invite Native peoples back to the land. We have to understand how they were disassociated from that. The ancestral homeland of the Muwekma Ohlone is deep.

People have been here for about 20,000 years. That’s a long, long time. For comparison’s sake, Ireland has only been settled for about 4,000 years. That’s where the other half of my family comes from. The coastline for California was about twenty miles off the coast right now, and you can look at, this is the bay. There was a river, two rivers that joined and went out past the Farallon Islands into the Pacific Ocean. Muwekma Ohlone people, their ancestors watched this happen in real time. They watched climate change happen. Even though we have this deep history, the Muwekma Ohlone people watched the Bay form and reform about four times over the last 7,000 years.

Connections to the bay, connections to land are anchored in reality. If you look at the lowest levels of the shell mounds that ring the bay, especially the Berkeley shell mound, they never found the bottom of it. It’s beneath the surface of the water, which means that people watched that happen. The bay looks like what it is. It looks like the sea levels just rose. If you go over to Raccoon Straits, I think, you just see this water. It looks like a bathtub filled. There’s no beaches. That’s because that happened very rapidly. I’m just going to talk about Muwekma’s history. This is a dance that was recorded in a painting in 1821.

If you read history books, Native people are not supposed to be here after about 1800. It’s a lie. Because they’re doing a dance right in front of the church, and you see the priests over there. We know that that’s not true. When we talk about relationships to land, what does that mean? The evidence for the maintenance of this area, the landscape, was sustained through the relationship between people, fire, and the land.

The first thing that the first governors of California, the Spanish governor, said was, “with the attention of the widespread damage results from the public,

from burning of fields, the customary up to now among both the Christian and Gentile Indians in this country, whose childishness has been unduly tolerated, wrote Don José Joaquín de Arrillaga, I see myself required to have the foresight to prohibit for the future, if it be necessary, of the rigors of the law, all kinds of burnings, not in the vicinity of the towns, but even at the most remote distances, to uproot this very harmful practice of setting fire to pasture land.”

That was to replace the Native food system with a European monocrop of cattle and wheat. That was in the 1700s, 1780. Fire ecology is a part of this knowledge system that we’re trying to reawaken. When we talk about cultural practices for Indigenous peoples, it’s not reviving. If you use that word, stop using it. It’s not dead. It’s awakened. It’s there. The names of plants restore stories and relationships between people when we talk about how they were used. Fire, I’m not going to go into so much of this, but the natural landscape of the Bay was managed by Native people for centuries.

Part of that is this, the creation of plants that are fire-adapted. Grasses are the main food source for Muwekma Ohlone people in the Bay for most of the history. It’s replaced by this stuff, which creates a massive fire hazard. What these plants do, because they’re adapted to fires, they slow down the spread of fire from one plant to another by putting out chemicals around them. Those are facilitated through burning, and burning is the only way that these plants can reproduce. Having that knowledge means that your connection to land is not only historical, but it also has a function that’s been lost and can be restored by contemporary land managers. Of course, the shell mounds were a big part of the history of California natives. I don’t know if Cafe Ohlone is open still but that was a great place to look and find food that is grown here by Native people.

Then we have this other issue of land transfers and the transfers of land through time from colonial times to the present. I start off with this to show this relationship between citizens, those Native people who were hired as ranch hands for most of California. Most of this was ranches. These are Native people who became cowboys, caballeros, and also in Hawai‘i. Some of these folks went to Hawai‘i, relocated there as part of that horse culture. The transfer of land from one group to another, the different governments that have come through nullified the ability of Native peoples to assert sovereignty over those spaces. Right now we’re finding evidence of that history of San Jose in the archives of Native people testifying in court appealing for and using legal remedies to secure access to properties. The court testimonies are there. We know the names of people, and those names are connected directly to the folks who are Muwekma Ohlone folks now.

Of course, you could talk about the eighteen unratified treaties that sets in motion this relationship of non-occupation California’s land. They’re signed in the 1850s, 1840s. They’re brought back to the capital in Washington, D.C. Gold is discovered. In the interest of national security, they’re buried in national archives for an undetermined period of time. They’re rediscovered in 1925 by this Indian agent named Kelsey. Kelsey comes out to California and tries to buy land for people. He sees Muwekma. He says, “Well, I can’t find—” No one will

sell him land, so he goes up north and decides to use that little money, that \$10,000 he has to help folks up north in the areas that are most of concern to him.

Even though we know that there are settlements because of this, this is a check from 1968, uncashed, of course. Muwekma Ohlone people were given a check to compensate them for the loss of that land. The place that they're most visible now are in construction sites.

Native people are allowed to be in public spaces to retrieve their ancestors as a part of the discovery process during construction projects. This is from San Jose where there are monitors of burials being removed. That's the relationship to land that's not terribly pleasant. Knowing that that's how most Native people are viewed and are visible in those spaces, creates that opportunity. This just shows you that from those eighteen unratified treaties you have, contemporary tribal lands are very, very limited, very small. What can you do? What can we do with this information? Knowing that that's the history, how can you restore relationships to land?

The Land Trust is one mechanism, a legal fictitious character that allows tribes who aren't federally recognized to create an institution that can receive donations of money and property. It's really almost impossible to give land or money to tribes. It's difficult to do without giving it to an individual. The Land Trust allows you to do this thing. It's this instrument that tribes can use. Land Trust could be quasi-Tribal institutions. They're not run by the board. Our board is specifically set up to have a majority of Tribal members. They determine what happens. The nuts and bolts, expertise that tell people can do those roles is just the people like myself and the other folks who work in other land trusts but the objectives are different.

The Ecology Center's philosophy that people in land are inherently—ecology, I was thinking about Jasper Ridge where I worked where the dam was being removed. I think ecological land trusts distance Native people from the land. There's a language, a performance, a way of talking about plants and animals that use Latin and Greek terms that makes it very difficult to access those spaces. There are these barriers between Native people participating in ecological restorations if it's run by a group of people that don't understand that history, didn't understand that part of things. Land trust centers people.

HuiMAU is unique and really amazing because it does tons of stuff. It starts out as just the reclamation of abandoned sugarcane fields. That's what that was. They pulled the weeds out and started planting food. Then people decided, "Well, what else can we do? Well, let's create a community center. Let's do a school camp. Let's do afterschool programming. Let's do a food kitchen. Let's have food distribution centers." Once those things are in place, a land trust can become something more than just ecological protection space.

In closing, I just want to say that I'm so excited to hear that there's this much energy and interest in this subject because I'm passionate about it, as you can tell, and I think that having these kinds of conversation allows us to learn from one another and see what the next steps can be in restoring these relationships. Even though that land acknowledgement may sound to some

people extreme, I don't think that it is. I don't think huiMAU is the only thing, but I think that's where we can aim towards, we can find avatars, we can find people and institutions that do things really well and emulate and work with them to develop partnerships between folks who have that knowledge and folks who need that knowledge. Thank you so much for being here today and listening to me and I'm happy to talk or answer questions after.

**Natalie:** All right. Thank you so much, Michael, for that really interesting talk. Thank you everybody for coming. All the guest speakers, all the participants, to Becky and Grayson, and to Shree for facilitating. It's been a really awesome day for me.

