Traditional vs. Legal Concepts of Land

Since time immemorial, Indigenous peoples have lived in relationship with the land. Land ownership was a concept introduced by colonists. Whereas, Indigenous people's relationship to land reflects a deep cultural and spiritual connection to natural features - mountains, rivers, plants, animals - forming the foundation of Indigenous identity, ceremony and traditional knowledge. As a result, land access and return is integral to Tribes restoring their relationship with the lands that hold the spirits of their ancestors, sustain their cultural traditions and produce First Foods.

In contrast to the colonial view of land as a commodity to be produced and divided, Indigenous relationships to land are grounded in reciprocal responsibility and respect. The land plays an integral part in the grounding of Indigenous cultural and spiritual identity. The restoration of Indigenous relationships to lands unjustly taken involves reestablishing access, stewardship and ownership in genuine partnership. Partnerships between land trusts, Tribes and land owners can help repair and support Indigenous sovereignty and cultural connection to ancestral lands.

Land Supports Traditional Lifeways on the Columbia Plateau

"For our Tribe, we believe in the importance of everything from the smallest insect to the largest bird and that part of where we live. Everything's connected. Klickitat River, White Salmon River, Wind River. All these rivers, they're all tributaries of Nch'i Wana - the Columbia River- in our ways and our beliefs is the main artery of this land. These mountains, these rivers, there's stories. There's legends." – Elaine Harvey (Yakama Nation Tribal Member & Fisheries Biologist)

For generations, the Cayuse, Umatilla and Walla Walla peoples followed a seasonal round that shaped their cultural and spiritual connection to the land.[1] Centered in

[1] First Foods and Life Cycles, Confederated Tribes of the Umatilla Indian Reservation., https://ctuir.org/about/first-foods/ (last visited June 10, 2025).

what is now northeastern Oregon and southeastern Washington, the three Tribes would be guided by the seasonal availability of salmon, roots, berries, deer and elk.[2] In the spring, families gathered along the Columbia River at places such as Celilo Falls to fish the first salmon and trade with neighboring Tribes.[3] As the season shifted to late spring and early summer, they moved into the foothills to dig roots - camas and bitterroot.[4] Late summer brought travel higher into the mountains to gather berries and hunt game and in the fall there was a return to the valleys for the salmon run.[5] Winter camps allowed communities to rest and prepare for spring.[6] This sustainable and reciprocal relationship with the Columbia River Region was fostered through Indigenous cultural and spiritual connection for over 10,000 years, where Indigenous communities have lived, gathered, and honored their First Foods.[7]

The Root Feast is one of three ceremonial feasts that Warm Springs Tribal members have in the year to celebrate their First Foods.[8] Root gathering is not only for sustenance, but also is a ritual that involves prayer, song and intention.[9] The elders guide the daughters as they step into leadership and pass on Traditional Knowledge to younger Tribal members.[10]

Since 2019, Wallowa Land Trust, in partnership with Tribal members, the Nez Perce Wallowa Homeland, and The Nature Conservancy, has supported restoration, healing and connection through the Wallowa Gathering.[11] The annual traditional root gathering brings Indigenous communities and local landowners together to reconnect with ancestral homelands, address the historic trauma of land dispossession, and revitalize traditional practices.[12] Landowners welcomed gatherers onto 70,000 to 100,000 acres and more than 150 Indigenous gatherers in 2024.[13]

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[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] Leah Altman, Root Down: At Warm Springs, a New Generation Leads the Feast, Underscore Native News, (June 20, 2025), https://www.underscore.news/land/root-down-at-warm-springs-a-new-generation-leads-the-feast.
[9] *Id.*
[10] *Id.*
[11] *State of the Lands,* Coalition of Oregon Land Trusts (June 20, 2025), https://oregonlandtrusts.org/wp-content/uploads/2025/06/SOTL25_V2_Web.pdf.
[12] *Id.*
[13] *Id.*

Land as a Legal Concept

Federal Indian policy has played a central role in removal to reservations, allotment, termination and restoration, shaping the history of land dispossession and recovery for Indigenous communities. Because these policies disrupted Indigenous connections to land, there is a need to revitalize Indigenous relationships to land through access and stewardship. Both federal and state statutes provide a framework for identifying sites of cultural and sacred significance to Indigenous communities. At the federal level, the 1966 National Historic Preservation Act (NHPA) aims to preserve historical and archaeological sites with cultural significance to Tribes.[14] Under this statute, Tribes may seek Traditional Cultural Property (TCP) designation for culturally significant places. The 1990 Native American Graves Protection and Repatriation Act (NAGPRA) recognizes the rights of lineal descendants and Indigenous communities in human remains, funerary objects, sacred objects, and objects of cultural patrimony.[15] NAGPRA requires deference and consultation to Native American Traditional Knowledge in these processes.[16] The 1978 American Indian Religious Freedom Act (AIRFA) affirms Indigenous peoples' rights to access sacred sites, use sacred objects, and practice traditional ceremonies on sacred ancestral land.[17]

At the state level, Oregon statute ORS 358.905 defines an "archaeological object" as material remains at least 75 years old that are part of the physical record of Indigenous or other cultures, and is material remains of past human life or activity.[18] Further "sites of archaeological significance" are sites determined eligible in writing for the National Register of Historical Places or determined significant by a Tribe.[19] Additionally, conservation easements can be used to protect the natural, scenic, historic, archaeological, and cultural values of land.[20]

Statutes like NHPA, NAGPRA and the AIRFA provide definitions and criteria that attempt to protect cultural and sacred sites. However, there is a disconnect between courts' interpretation of legal frameworks and its ability to reflect Indigenous spiritual relationships to land. As seen in *Apache Stronghold v. United States,* judicial interpretation does not always respect Indigenous cultural and spiritual connections

[14] National Historic Preservation Act, 54 U.S.C. §§ 300101-307108.
[15] Native American Graves Protection and Repatriation Act, 25 U.S.C. § 3002.
[16] *Id.*
[17] American Indian Religious Freedom Act, 42 U.S.C. § 1996.
[18] OR. REV. STAT § 358.905(1)(a).
[19] *Id*. at (1)(b).
[20] OR. REV. STAT §271.715.

to the land. As attorney Howard Arnett observes, "Courts have struggled with the sacred sites case of just the idea that landscape is the basis of a religion." [21] In contrast, the Confederated Tribes of the Umatilla Indian Reservation's Cultural Resource Protection Program is an example of how Tribal led preservation, in conjunction with federal law, can re-center site preservation around Traditional Knowledge and values.[22]

Case Study, *Apache Stronghold v. United States*:

The sacred site of Chí'chil Biłdagoteel, Oak Flat holds deep religious and cultural significance for the Western Apache Tribe.[23] Western Apache religious practices at Oak Flat date back at least a millenium.[24] The Western Apache believe that Oak Flat is a sacred place that is a direct link to their Creator.[25] Oak Flat is the site where they believe they can communicate with Ga'an, who is one of their spirit messengers that connects the Western Apache to their Creator.[26] As a result, this connection with the land at Oak Flat cannot be replicated elsewhere, making the land essential to Western Apache religious and spiritual practice.[27] An important ceremony that originates at Oak flat is the Sunrise Ceremony.[28] This Ceremony is a rite of passage for Western Apache girls.[29] The Sunrise Ceremony is part of the Apache origin story that included the White Painted Woman, the first woman.[30] Spirits guided the first woman to create this ritual for all Apache girls in their transition into womanhood and "keepers of the [Apache] way."[31]

Located in the Tonto National Forest on federally owned land, Oak Flat contains a copper ore deposit beneath the land.[32] Congress passed a statute that directed the

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[21] Howard Arnett, *Defending Sacred Sites,* Youtube (Aug. 16, 2024), https://www.youtube.com/watch?v=Rd1bmbxeP2Y.
[22] Cultural Resources Protection, Confederated Tribes of the Umatilla Indian Reservation., https://ctuir.org/departments/natural-resources/cultural-resources-protection/ (last visited June 20, 2025).
[23] *Apache Stronghold v. United States,*101 F. 4th 1036, 1044 (9th Cir. 2024).
[24] *Id.*
[25] *Id.*
[26] *Id*
[27] *Id.* at 1045.
[28] *Id.*
[29] Apache Stronghold v. United States: The Ongoing Battle to Save a Sacred Apache Site, First Nations Development Institute., https://www.firstnations.org/stories/apache-stronghold-v-united-states-the-ongoing-battle-to-save-a-sacred-apache-site/?bbeml=tp-pck9Q6QNPEiuBt3JmyTokQ.jJmDz5zQndECUU4S7awQN9g.rmVxzrhq9sUiWPYixhOL4tw.l0DmZG1IwZ0SdlHg2oAnleA (last visited June 20, 2025).
[30] *Id.*
[31] *Id.*
[32] *Apache Stronghold v. United States,*101 F. 4th 1036, 1044 (9th Cir. 2024).

federal government to transfer the land of Oak Flat to a private company, Resolution Copper, with the intention of mining the ore.[33] Mining beneath Oak Flat would create a crater that would prevent access for religious ceremonies on site.[34]

In the Supreme Court case *Apache Stronghold v. United States,* the Apache Stronghold, an organization that represents certain members of the San Carlos Apache Tribe, is suing the Government and seeking an injunction against the land transfer due to the transfer violating members' rights under the Religious Freedom Restoration Act (RFRA), the Free Exercise Clause of the First Amendment, and an 1852 treaty between the United States and the Apaches.[35] The district court denied Apache Stronghold's request for a preliminary injunction due to the Apache Stronghold not showing a likelihood of success on the merits.[36]

In a 9th circuit ruling the court deemed that the United States government did not violate the RFRA and affirmed the district court's denial of the preliminary injunction.[37] Further, in a recent decision as of May 2025, the Supreme Court denied writ of cert.[38] In the dissenting opinion by Justice Gorsuch and Justices Thomas, the justices criticized the 9th circuit's application of the RFRA since there is historical and religious significance of the Oak Flat site to the Apache Tribe.[39] The justices further stated in the dissent that this case is ruled differently by the 9th circuit in comparison to other cases in which the court did hold that an obstruction of a religious exercise violates the RFRA.[40] As Apache Stronghold leader and former San Carlos Tribal Chairman Dr. Wendsler Noise Sr. powerfully stated: "Chí'chil Bildagoteel (Oak Flat) is our Mt. Sinai — our most sacred place where generations of Apaches have come to connect with our Creator, our faith, and our land. We pray the justices will protect Oak Flat and ensure that our place of worship is not treated differently simply because it lacks four walls and a steeple."[41]

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[33] *Id.*
[34] *Id.* at 1047.
[35] *Apache Stronghold v. United States,* 605 U.S.---, 2025 WL 1496472 (2025) (Gorsuch, J. and Thomas, J., dissenting).
[36] *Id.*
[37] *Id.*
[38] *Id.*
[39] *Id.*
[40] *Id.*
[41] Apache Stronghold v. United States: The Ongoing Battle to Save a Sacred Apache Site, First Nations Development Institute., https://www.firstnations.org/stories/apache-stronghold-v-united-states-the-ongoing-battle-to-save-a-sacred-apache-site/?bbeml=tp-pck9Q6QNPEiuBt3JmyTokQ.jJmDz5zQndECUU4S7awQN9g.rmVxzrhq9sUiWPYixhOL4tw.l0DmZG1IwZ0SdlHg2oAnleA (last visited June 20, 2025).