HCRS
U.S. Department
of the Interior
Heritage Conservation
and Recreation Service

11593

11593 Special Issue
Fall 1980

Information Related to Responsibilities of the Secretary of Interior
Section 3, Executive Order 11593

Legal Tools to Preserve Archeological Sites

by Geoffrey M. Gyrisco
Archeologist
District of Columbia State
Historic Preservation Office

The Preservation Planning Series, produced by the Division of State Plans and Grants, is designed to provide technical information on important identification, evaluation, and protection issues in preservation planning.

This article deals with a seldom discussed topic: Ways to preserve archeological sites. Whenever a development/archeological site conflict arises, the odds are that most planners and environmental compliance officials will turn to archeological salvage on the theory that this merely relocates the important "values" of a site from point A (its original location) to point B (a repository). Of course, nothing of the sort actually occurs and frequently a great loss of historical materials is suffered. Mr. Gyrisco's paper describes a host of preservation options other than salvage or fee simple acquisition. We commend these to preservationists and to land-use planners as important alternatives for archeological site preservation, which in many cases are far less costly than data recovery.

We welcome comments on this subject, and invite suggestions for topics to be addressed in future issues of this series. We would also be pleased to consider unsolicited manuscripts on subjects appropriate to preservation planning. All inquiries should be sent to Preservation Planning Branch, Division of State Plans and Grants, Heritage Conservation and Recreation Service, Washington, DC 20243.

Photo: Mark Barnes

Foundations of the spinning house, Corotoman Site, Lancaster County, Virginia

The preservation of archeological sites and historic structures was merged in the joint federal-state historic preservation program established under the National Historic Preservation Act of 1966. As a result, archeological resources on federal lands or in the path of federally licensed or funded projects are now considered in project planning.

Many existing state and local laws, programs, and tax incentives, devised primarily with architectural and natural resources in mind, are broadly written and are applicable to archeological resources. This article surveys these mechanisms including special forms of zoning; easements; farm, forest, and open-space retention programs; land banks and land trusts; greenline parks and greenbelts; and nature preserves. Easements are described in detail as they are most immediately and widely applicable techniques for preserving archeological sites. With effective use of these mechanisms, state and local governments and private organizations and persons can do much to protect archeological resources.

Historic District Ordinances

Although local historic preservation ordinances will not be the most used tools for protecting archeological sites in the immediate future, they may prove very useful in the distant future. The problem is the limitation of state enabling legislation.

Zoning, including historic district zoning and landmark designation, is a police power reserved for the states by the US Constitution. The states delegate this power, through enabling statutes to the localities. A glance at a few of these enabling statutes shows that while the designation provisions are broadly written, provisions regarding protective mechanisms are very narrowly written. Local governments have powers to designate historic buildings, sites, and districts, under which archeological remains, though not specifically mentioned, could be included. However, the narrowly written powers to prevent unsympathetic alterations or destruction apply to buildings only. This limitation is unfortunate as there are 589 landmark and historic district commissions in the United States (National Trust 1979a: 4) that could be working to protect archeological resources. In some states, such protection is available, depending on the particular enabling legislation.

Unlike rural historic districts, urban historic districts often have an adverse impact on archeological resources. While historic district zoning reduces demolition, thereby protecting archeological resources and their context; such zoning often attracts people with higher incomes, who stimulate extensive rehabilitation, which frequently results in massive ground surface disturbance. This occurs in both the front and back yards as utilities are renewed, basements waterproofed, entrances altered, new kitchens and porches added in back, and the property relandscaped. The archeological remains need to be perceived and protected as part of the historic resources of the district. Alteration of the ground surface needs to be controlled just as do alterations to the building's fabric.

A unique historical landmark ordinance recently passed in Oklahoma City provides a means to designate and protect both archeological remains and historic structures. Those wishing to work on the exterior of a historic structure or to develop a property containing a designated archeological resource must obtain a "certificate of appropriateness" from the Historical Landmark Commission. In order to get a certificate, the applicant must provide for permanent preservation of the resource or for completion of the necessary and appropriate study and work as recommended by a qualified archeologist. The archeological work, curation, and exhibiting of recovered archeological materials must meet standards set by the State Historical Society (City of Oklahoma City, n.d.: Division 6, Section 25–197 (f) (1)).

A minor defect apparent in the Oklahoma law is that archeological resources are regarded as a separate category. Although some special procedures may be necessary, it would be preferable to integrate archeological resources into a unified concept of historic resources. This approach is stressed in *The Secretary of the Interior's Standards for Historic Preservation Projects* (1979). In such a unified concept archeological resources might be seen as being the foundation of the historic structure and the roots of the historic setting while the historic structure is that part of the archeological site that protrudes above the ground.

Another weakness in the Oklahoma law concerns membership in the commission. While there is provision for an architect, real estate broker, historian, planner or landscape architect, attorney, and four citizens, there is no provision for an archeologist to be a commission member. These defects could be remedied, however, in carrying out the ordinance. The ordinance is very simple and straightforward, but a lot of work and regulations will be required to survey, designate, and regulate archeological remains. Even as it now stands, the Oklahoma City ordinance is a landmark in historic preservation law; a similar ordinance is under consideration in Tyler, Texas.

Over several decades, the legal justification for historic district zoning has gradually shifted from the protection of commercial values, as in the Vieux Carre, to the protection of property values, and recently, to the protection of aesthetics alone (Kyre 1976: 239–240). Protection of archeological values is a logical next step. Local governments can exercise considerable protection of archeological remains, which will be later shown in examining how the California Environmental Quality Act operates.

Other Types of Zoning

Other types of zoning could also provide protection for archeological resources. For example, flood plain zoning offers incidental protection to archeological sites often occuring in flood plains, and large lot zoning would slightly reduce the damage to archeological resources. However, cluster zoning and planned unit developments (PUD) could be very useful if developers were either willing or forced to consider archeological resources. Sites could be preserved in the open space. To be effective as a preservation tool, an archeological survey would be necessary before the site plan of the development is designed.

An extreme form of cluster zoning—performance zoning—is being used to preserve farmland in Buckingham Township, Bucks County, Pennsylvania. Performance zoning permits a gross density of 0.5 dwellings per acre, but requires that 90 percent of the land be set aside as permanent open space (Richman and Kendig 1978: 4). Bonus or incentive zoning goes one step further, and enables density increases and thus profit increases in exchange for specific public benefits. "Prince George's County, Maryland, for example, grants 10 percent to 50 percent increase in dwelling unit density in exchange for separated pedestrian systems, common recreation areas, preserving stands of trees or historic buildings and more" (Einsweiler 1978:

Photo: Courtesy of The Nature Conservancy, taken by Betsy Jewett.

The Nature Conservancy will protect historic Brownsville, Virginia, and the surrounding 1,400 acres in Northampton County, using the property as a headquarters and research and visitor's center for the organization's Virginia Coast Reserve.

278). The preservation of archeological sites should be included.

Local Antiquities Ordinances

A few cities and counties have passed ordinances specifically protecting archeological sites, though not as part of comprehensive historic preservation ordinances. While Los Alamos County, New Mexico, has a protective ordinance (Le Blanc 1979: 6), most appear in California, which since the 1960s has been on "the regulatory frontier" (Bossleman, Callies and Banta 1973: 38). Under pressure from Native Americans in 1967, Inyo County started regulating the excavation of Indian burials. Excavation was limited to professional archeologists holding county permits, and to cemeteries not in active use. In 1967 Marin County passed a law to regulate the excavation of shell middens by requiring that 60 days be allowed for salvage. Although the law may seem weak by California standards of today, it would be a novel restriction in most other parts of the country.

In 1977, the city of Larkspur, California, passed a law stating that "it shall be unlawful for any person to excavate or disturb, in any fashion whatsoever, any archeological resource prior to issuance of an archeological investigation permit" (Larkspur Municipal Code 15.42030(a)). Mitigation of the adverse effect of construction on archeological resources may be required before a building permit is issued. Mitigation measures include relocation of the construction away from archeological resources or excavation by a qualified archeologist.

Easements

Easements avoid the legal and political limitations of historic district zoning while providing tighter control over specific properties. The potential of easements to protect archeological sites *is* great but, their use is infrequent. In Maryland, for example, where the law simplifies the donation of easements, the Maryland Historical Trust has solicited and received many open-space and facade easements. The Trust has not acquired any easements on property of primarily archeological importance because archeologists have not actively solicited archeological easements. The situation is similar across the country, except for the special case of California, where many easements on archeological sites have been donated under the California Environmental Quality Act. The importance of actively soliciting easements and the snowball effect of such activity has been shown by the Maine Coast Heritage Trust, which acquired easements on 50,000 acres in 4 years (The French and Pickering Creeks Conservation Trust 1974: 27–31). Given the usefulness of easements in protecting natural and historic resources, archeologists should be actively cooperating with natural conservation and architectural preservation groups in the acquisition of easements.

Photo: Mark Barnes
Mimbres bowl from Woodrow Ruin, New Mexico

"An easement is an interest or a right in property which is less than the full, or fee simple, interest" (Maryland Historical Trust 1975: 3). It places restrictions on future alteration or development, protecting historic and natural resources from damaging changes. Easements are widely applicable because they can be individually written to avoid placing hardships on the property owner. They may be acquired by purchase, exchange, will, or eminent domain, but usually they are acquired by gift. Easements are recorded in deed books, or in some states, in special deed books devoted solely to the recordings of easements (Brenneman 1975–1976: 238). They are generally in perpetuity to qualify the donor for federal income tax deductions.

Federal, state, and local tax benefits can be substantial and provide significant incentives for a landowner to donate an easement. Easements may be acquired by the federal government, state governments, and state institutions, local governments, national nonprofit charitable organizations such as the National Trust and the Nature Conservancy, or local ones such as land trusts like the Berkshire County Land Trust and Conservation Fund, universities, historic preservation organizations, and historical societies. In addition to tax benefits, easements can

offer some protection in eminent domain proceedings because the states cannot condemn an easement held by the federal government, and usually local governments cannot condemn an easement held by the state or the federal government.

Aside from the fact that easements must usually be bought or given by a willing donor they have some other shortcomings. Easements must be enforced, and in some areas this has been a problem. According to the National Park Service, for example, there has been trouble enforcing the scenic easements covering the land of hundreds of property owners along the Blue Ridge Parkway (Brenneman 1975: B6; Coughlin, Plaut, and Strong 1978: 242). In any case, the management costs of easements should not be overlooked, though they may be less than the costs of fee simple ownership. Additionally, in states with laws designed to facilitate title searches, easements die if they are not rerecorded every 20 or 30 years (Brenneman 1975–1976).

Negative Easements and Positive Easements

There is not necessarily any important distinction in the array of terms—conservation easements, preservation easements, conservation restrictions, preservation restrictions, scenic easements, and the like—but there are important differences between easements under common law and those granted under recent state statutes. Negative easements "in gross" under common law have questionable durability (Brenneman 1975–1976: 232). "A positive easement is one that gives an affirmative right to use land. A negative easement is one which restricts the owner in the use of that land." An appurtenant easement is one that is intended to benefit and does in fact benefit the owner of a parcel of land in the use of that land, such as a right-of-way (The French and Pickering Creeks Conservation Trust 1974: 86): "An easement 'in gross' is an easement that is not related to the ownership of land as such." A scenic easement is a classic example of the easement in gross (The French and Pickering Creeks Conservation Trust 1974: 87). The common law does not look kindly on negative easements in gross and they are likely to be cut short by nonassignability from one holder to another, the failure of the benefit to "run" with the land, and other difficulties (Brenneman 1975–1976: 232). To remove this difficulty, many states have recently passed laws specifically providing for negative easements in gross to be used in the preservation of natural and historic resources. Archeology may not be specifically mentioned in these laws, but it can generally fit easily into the provisions for historic preservation or open-space easements or both. Thus, organizations and governments may acquire easements that are merely agreements by the property owner not to do something to his property and to likewise bind all his successors in perpetuity.

Does all this affect easements on archeological sites? It does. Virginia has a state statute providing for easements, the "Open Space Land Act" of 1966 (Code of Virginia, Chapter 13, Title 10–151 to 10–158). Under this act, the Goodwins donated to the Virginia Historic Landmarks Commission an "open space easement in gross" over the Corotoman Site, the site of the mansion house of Robert "King" Carter. The Goodwins merely agreed not to do certain things that would damage the site. Most importantly they agreed:

> In order to preserve for future generations information to be gained from properly conducted archeological excavations of the above described premises, that portion of the above described premises lying below the zone of cultivation shall not be disturbed without the prior written approval of the Grantee. (Lancaster County, Virginia, Deeds, Book 186, p. 64.)

The Goodwins did not give the state the right to excavate the site. In New Mexico, the Mimbres Foundation has used *positive* easements under common law three times to protect sites in the Mimbres Valley. These provide that "the Foundation has the right to conduct full and exclusive archeological exploration and scientific studies upon the real estate described" and "the Foundation shall take title to and shall be the owner of any artifacts . . . and all other items of historical, archeological or scientific value or significance to the foundation" as well as have the right of access. Since it provides for the excavation and ownership of the archeological remains by the holder of the easement, it is much like a traditional timber or mining rights easement. To avoid any traditional interpretation of abandonment, the agreement further provides that "the Foundation may leave sites unexcavated for future exploration and such shall not be construed as an abandonment of this easement." This type of easement is useful for acquiring sites on undevelopable locations in the middle of large tracts of range land and other locations where the landowner is willing to give up more rights over a site than provided for by a negative easement (LeBlanc 1979). Some landowners may wish to retain ownership of the artifacts when donating an easement, in order to take an additional tax deduction on the donation of the artifacts if the site is excavated, as in the case of Averbuch, discussed below.

Another example of an easement on an archeological site is at the Stricker Pond Site, near Madison, Wisconsin, a Late Woodland (c. 1200) village. Previously surveyed and tested, the site was called to the developer's attention. He was persuaded not to develop a strip of land along the edge of an adjoining area required for a park by ordinance. Most of what was left of the site was thus preserved. He gave an easement on this additional strip of land to the city of Middleton. Except in California, such examples of easements arranged primarily because of the archeological importance of the property are rare.

Under the California Environmental Quality Act, cities and counties may wield considerable power to protect archeological sites, as in Orange, Santa Barbara, and San Diego counties, or use very little as in Kern and Riverside counties. In San Diego County, for example, before developers can get the necessary permits, they must mitigate the adverse impact of their projects on archeological sites. Because excavation is expensive, mitigation consists of micromapping the surface and removing all visible material that would be destroyed by the influx of

Photo: Walter Smalling, Jr.

Effigy pot recovered during excavation of the Averbuch Site in Tennessee

people, some subsurface testing, and deeding of the area as open-space. The county collects five or more easements per week in this way. The developers have accepted this system, regarding archeology as a secondary problem and expense, overshadowed by problems such as sewer service and geology.

Many easements acquired to protect natural and above-ground historic resources offer considerable incidental protection to archeological sites. For example, the Nature Conservancy's Sample Conservation Easement says, "there shall be no filling, excavating, dredging, mining, removal of topsoil, sand, gravel, rock, minerals or other materials nor any building of roads or change in the topography of the land in any manner excepting the maintenance of foot trails" (Nature Conservancy 1976: 11). Clearly, such an easement could offer much protection. The area covered by such easements are substantial. The Forest Service has acquired easements on 10,000–12,000 acres in the Sawtooth National Recreation Area in Idaho; the US Fish and Wildlife Service has obtained over 16,000 easements protecting wet areas for waterfowl reproduction; and the state of Wisconsin holds scenic easements of 17,000 acres beside the Great River Road, along the Mississippi River (Coughlin, Plaut, and Strong 1978: 231–232). Under the Wild and Scenic Rivers Act, a large-scale program of easements to control growth along the Clearwater River in Idaho is being used to protect archeological sites. The holder of the easement and the landowner must give permission before a site can be dug (Higgins 1972). A sample Deed of Scenic, Open Space, and Architectural Facade Easement used by the National Trust states that "no topographical changes, including but not limited to excavation . . . shall occur upon the property." While this offers some protection, no doubt additional protection could be provided if an assessment were made of the archeological potential of the property and the easement tailored to the situation and made more specific. The Goodwins' easement on Corotoman explicitly mentions the archeological importance of the site and that the protected area is "below the zone of cultivation." While this is a commendable attempt to define the protected areas, the phrasing is poor. Modern agricultural practices, such as subsoiling, may greatly extend the zone of cultivation downward, thus permitting the site to be destroyed despite the easement.

Tax Aspects of Easements

There are substantial federal, state, and local tax incentives for the donation of easements, or land, particularly in areas under development pressure. In these cases, the value of the easement as determined by the before-and-after method is usually large. If the easement is given to a government or a 501(c)(3) charitable organization recognized by the Internal Revenue Service, it can be claimed as a charitable deduction on federal income taxes. Charitable contributions in excess of the statutory limits may be carried over and used during the next 5 years. In order to receive a federal income tax deduction, the easement must be in perpetuity. A gift of an easement may usually be used as a state income tax deduction. Particularly important in areas of rapidly rising land values, when property is sold, federal capital gains tax will be reduced through the gift of an easement.

A major threat to large landholdings and farms in the East and near big cities in the West, are state and federal estate taxes. Estate taxes based on the highest and best use of the land frequently force heirs to

Photo: Courtesy of the Department of Anthropology, University of Tennessee.

Graves excavated in a housing subdivision. The developer donated the artifacts to the state, and deducted the cost expended in the field to recover the data from his income taxes. Averbuch Site, Tennessee.

Photo: Mark Barnes.

The city of Palm Springs, California, purchased Tahquitz Canyon, a desert oasis surrounded by literally hundreds of archeological sites, as part of a greenbelt around the city. The purchase was assisted by a HCRS matching grant.

give up farming and other open-space uses and sell out to developers. The gift of an easement can prevent this—a major selling point in acquiring gifts of easements. Many eastern states have special tax programs to encourage the preservation of agricultural land, forest land, and open space. Finally, local property tax reduction can be a major financial incentive to donate an easement, in the case of open-space easements on land with good development potential. The owner can enjoy the open space with archeological sites preserved on it, and a lower tax bill.

There are some special conditions in some states, such as Vermont, where the easement must be held by the state or a local government to qualify for a property tax reduction (Bradley 1976: 2). For a discussion of the tax aspects of easements, with examples, see *Charitable Gifts of Land: Their Tax Implications* by Bradley (1976).

The only established way a value can be placed on the easement for an archeologial site is through the standard "before-and-after" or "with-and-without" formula. That is, what was the value of the property without the restriction, what is the value of the property with the restriction, the difference between the two being the value of the easement (Goetsch 1975–1976: 397).

Tax Deduction for Donation of Artifacts

In the case of the Averbuch Site, Tennessee, a large village and cemetery site excavated under contract with Interagency Archeological Services, US Department of the Interior, the developer donated the excavated archeological material to the state. The IRS accepted as the value of the material the total amount expended in the field to recover the data. This is a solution to the problem of determining the value of archeological artifacts. The IRS has not yet ruled on the use of the potential cost of excavation or the potential commercial value of the artifacts in an unexcavated site as the basis of determining the value of an easement.

Tax Reform Act of 1976

Both the accelerated depreciation incentive and demolition penalty provisions of the Tax Reform Act of 1976 to encourage the preservation of historic properties apply only to depreciable income-producing or commercial structures. Virtually no archeological site will be directly affected by these provisions. Benefits of the Tax Reform Act, however, may and have been denied for failure to comply with "The Secretary of the Interior's Standards for Historic Preservation Projects." The "Secretary's Standards" repeatedly require that "every reasonable effort shall be made to protect and preserve archeological resources affected by, or adjacent to, any acquisition, protection, stabilization, preservation, rehabilitation, restoration, or reconstruction project" (1979: 3). The guidelines recommend: retaining archeological resources intact whenever possible, minimizing ground disturbance, surveying and evaluating the archeological potential of the area, monitoring ground disturbances, avoiding the use of heavy machinery and the installation of utilities where they may disturb archeological resources, obtaining professional archeological guidance, and undertaking archeological investigations in accordance with the data recovery guidelines (36 CFR 66).

State Environmental Protection Acts

Some state environmental protection acts afford a modest amount of protection for historic resources, as in Massachusetts, while some afford considerable protection, as in several local California jurisdictions. The Massachusetts Environmental Policy Act, 1973, offers protection for known sites in large state funded or licensed projects in wetlands (Massachusetts Association of Conservation Commissions 1978: 49).

In 1970, Vermont's Act 250 established a permit process requiring that most large-scale development be reviewed by a district environmental commission appointed by the governor. "The commission must, among other things, establish that the projected project 'will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites or rare irreplaceable natural areas' " (Stokes and Getty 1979: 11). In conception and effect, Act 250 is one of the strongest instruments of land-use control in the nation and it should offer protection to archeological sites.

The California Environmental Quality Act (CEQA) requires and enables local governments to regulate private land through discretionary actions such as building and grading permits and tract map approval. Environmental impact reports may be required, and permits may be issued with conditions attached. The resulting protection for archeological resources varies from substantial to negligible depending upon the jurisdiction. Orange County, one of the jurisdictions providing the strongest protection, exceeds CEQA requirements in that the developer must pay for the background research, surface and subsurface survey, and monitoring of grading. The developers redesign projects and pay for the mapping and collection of surface scatters. By law, the county must pay the full cost of salvage excavation when it would cause an unreasonable burden on the developer. This occurs about twice a year and building permit fees pay for the work. The system runs smoothly because development is so lucrative that archeology is a minor expense.

Farm, Forest, and Open-space Retention Programs

Many eastern states have recently enacted a variety of laws to encourage the retention of farms, forests, and open space. While agriculture may be a major threat to archeology in other parts of the country, in much of the East, keeping land under cultivation may offer the best medium-range preservation solution. In fact, those concerned with the preservation of prime farmland and those concerned with the preservation of archeological sites share a common problem: development is drawn just as disproportionately to prime farmland (Sampson 1978: 4), as it is often drawn to areas of high site density.

Agricultural districts, such as those in New York, are formed voluntarily to protect agricultural areas. Agricultural districts may require large lot zoning, set limits on government improvement such as municipal water and sewer systems, facilitate transfer of development rights, and allow for assessment of real estate used for agriculture at its use value rather than market value.

In Maryland all counties and cities may grant a tax credit (abatement) of up to 75 percent, and in suburban jurisdictions of up to 100 percent, on land that has been established as open space and on which the owner has given a perpetual open-space easement. In two of the fastest growing suburban counties, Prince Georges and Montgomery, the easement and tax credit may be temporary, granted for periods of 5 years or more. A tax credit of 75 percent may be provided if the owner conveys a perpetual easement to the Maryland Agricultural Land Preservation Foundation, restricting the use of the land to agricultural land and woodland (Maryland Historical Trust 1975: 32–34).

Vermont is one of many states with provisions for use-value assessment of agricultural and forest lands, with no easement required. In this case there is a stiff penalty for developing the land—10 percent of fair market value of the property. Use-value assessment is an important tool in preserving farmland, but even with stiff provisions for recapture of lost taxes if the land is developed, it alone will not prevent urbanization. If land values are rising, developers can use such provisions as a tax shelter. Also, reducing taxes for some means raising taxes for others. This can be politically risky. The cost of increased services required if the land is developed may convince some to accept use-value assessment (Stokes and Getty 1979: 8–9). For further discussion of the use of differential assessment as an incentive for open-space preservation and farmland retention, see Coughlin, Berry, and Plaut (1978).

For a different purpose, but operating on the same principle, and perhaps useful also for archeology, is California's provision for reduced assessments on National Register and state register listed properties through a 20-year contract in which the owner agrees to preserve the property (Shull 1975–1976: 346).

Development Rights Purchase and Transfer

The transfer of development rights has considerable potential for historic preservation in both urban and rural areas and for the preservation of archeological sites, as well as for other historic natural resources. In separating the right to develop a particular parcel of land from the ownership of that parcel of land, we are able to preserve the existing use of the land. The right to develop a parcel of land can be moved from the original parcel of land, where further development is prohibited, to another parcel of land. This second parcel of land may then be developed at a higher intensity than would otherwise be permitted by the zoning ordinance. Transferable Development Rights (TDR) programs have been established in Buckingham Township, Bucks County, Pennsylvania, on the rapidly expanding suburban fringe of Philadelphia (Richman and Kendig 1978) and in two New Jersey municipalities (Pizor 1978). Because of their complexity, however, these are among the few places where transferable development rights have been applied in rural areas (Stokes and Getty 1979: 16).

Governments are purchasing development rights to preserve farmland in several states. Millions of dollars are being spent to preserve thou-

sands of acres of farmland in Suffolk County, Long Island, New York, through the purchase of development rights (Klein 1978). Connecticut is raising $500 million to purchase development rights on agricultural land through a 1 percent transfer tax. Massachusetts has started a $5 million pilot project (Scheller 1979: 70). Seattle and its surrounding area recently approved a plan to purchase the development rights on up to 12,000 acres of farmland (National Trust 1979a: 4). If the development rights are purchased by the state, farmers can afford to sell their farms to the next generation of farmers. The preservation of farmland offers considerable incidental protection to archeological remains. If the funds were available, a similar method could be used specifically to protect archeological sites, though for smaller areas.

Land Banks and Land Trusts

"Land banking involves government purchase of large tracts to be put in reserve to control their future development and meet such future community needs as industry, housing, and open space" (Stokes and Getty 1979: 13). Land can be acquired well in advance of need, when prices are low. The public benefits from the land's increasing value and orderly development (Coughlin, Plaut and Strong 1978: 225). The land bank gives local governments far more control over the land than they would have through the planning and zoning process alone, and it allows them to coordinate the need to preserve archeological sites with other community needs in assigning different uses to different parts of the tract.

A *land trust* is a private nonprofit community organization that typically purchases or receives by donation critical tracts of land. The land can either be managed for conservation or recreation or can be resold subject to development restrictions. Citizens in Lincoln, Massachusetts, formed the non-profit Rural Land Foundation to purchase and protect a historic 109-acre farm from intensive development. It transferred the most significant 54-acre open-space section to the nonprofit Lincoln Land Conservation Trust to be managed for conservation and recreation and developed the remainder in such a way as to retain its rural character. The profits from the development covered the expense of keeping the 54 acres open. Working in tandem, the two Lincoln organizations have undertaken other open space protection projects as well. The trust limits itself to holding and managing the land while the foundation takes on the role of a responsible developer. (Stokes and Getty 1979: 13–14.)

If an archeological survey were done before the land was divided into preservation and development areas, archeological values could be considered as other historic and natural values are in the operation of a land trust.

Greenline Parks and Greenbelts

"Greenline parks," such as the Adirondack Park, New York, and Cape Cod National Seashore, Massachusetts, intermix public land with private land controlled by easements and zoning. Greenline areas are coherent resource areas that are comprehensively planned, regulated, and managed by an authority set up specifically to preserve its recreational, ecological, historical, and cultural values. The advantages of a greenline approach are lower costs in establishing and expanding the park and greater political support since less land is taken and the possibility remains of preserving living historic communities. The chief disadvantages are overuse of the limited public lands, landowner opposition, and difficulties in enforcing regulations (Kusler and Duddleson 1978: 117, 125–126). Greenline parks offer incidental protection to archeological remains by reducing development. Archeology should be a consideration in deciding what land and easements should be purchased.

Greenbelts can offer considerable direct protection to archeological sites as well as indirect protection through control of urban sprawl.

The city of Palm Springs, California, purchased Tahquitz Canyon, a desert oasis surrounded by literally hundreds of archeological sites, as part of a greenbelt around the city. The purchase was assisted by a Heritage Conservation and Recreation Service matching grant-

Photo: Courtesy of The Nature Conservancy, taken by Dave Bohn.

Santa Cruz Island Archeological District, Santa Barbara County, California. When The Nature Conservancy purchased the island, the difference between the $50 per-acre paid and the estimated $5,000-per-acre market value gave the owner a tax deduction stretched over several years

in-aid. The community is working to ensure protection of the sites and development in conjunction with the Department of Anthropology, University of California, at Riverside (Barnes 1979: 10).

Nature Preserves

Nature preserves offer one of the best opportunities for cooperative preservation of natural and historic resources. The owners of the Young-Hirundo sites in Maine, deeded them to the University of Maine at Oruno, as part of a bird sanctuary (Barnes 1979: 9).

Since its founding in 1951, the Nature Conservancy has protected 1.6 million acres of land involving more than 1,300 sanctuaries. Not only has this program provided incidental protection to archeological sites, but also it has preserved areas of outstanding archeological importance. The conservancy recently completed the $2.5 million acquisition of Santa Cruz Island, California, which contains over 3,000 known Chumash Indian sites. These sites are of great archeological importance because the once numerous Chumash sites on the 120 miles of coast between Santa Barbara and Los Angeles have been reduced to a mere four sites. The owner of approximately 90 percent of Santa Cruz Island and the conservancy worked out an agreement paying the owner $50 an acre for his portion of the 60,000-acre island in a bargain sale. The difference between $50 per acre that was paid and the estimated $5,000-per-acre market value gave the owner a tax deduction stretched over several years (Barnes 1979: 14–16).

Photo: Courtesy of the National Register of Historic Places.

Santa Cruz Island Archeological District, Santa Barbara County, California. The Nature Conservancy recently completed the $2.5 million acquisition of the island, which contains over 3,000 known Chumash Indian sites.

Conclusions

Because important ecological, scenic, architectural, and archeological resources so often occur in combination, much can be gained through cooperation. For example, the French and Pickering Creeks Conservation Trust, about 25 miles west of Philadelphia, is gathering easements to protect the scenic and architectural values of the region. Such a program could also be used to protect the archeological remains relating to the early iron industry around Hopewell Village. In addition to preserving resources that occur together, archeologists, generally knowing little about legal tools such as easements, need the expertise of lay persons and lawyers that natural conservation and architectural preservation organizations can provide. The recently formed Archeological Conservancy (236 Montezuma, Sante Fe, New Mexico 87501), modeled on the Nature Conservancy, has already been able to acquire some major sites and is negotiating for several more. Providing expertise in legal techniques may be one of the biggest contributions fellow preservationists can make to help preserve archeological sites.

Likewise, those concerned with architectural preservation and natural conservation need to recognize archeology as another related heritage value with an important constituency working to preserve the resource. Architectural preservationists are increasingly aware of the importance of preserving the whole—the setting and district as well as the key buildings, the later additions as well as the original structures and the houses of workers as well as those of the wealthy. And archeological remains are a part of that whole, enhancing understanding and enjoyment of the complex of historic and natural resources of an area. Archeological remains provide evidence of how the other resources came to be the way they are, and on how they were used by previous generations. Legal protection for historic resources must not stop at the ground level.

Many methods used to preserve natural resources and historic structures can and should be used to preserve archeological sites. The minor role these legal tools have thus far played in archeology is evidence of the emphasis on salvage at the expense of the conservation ethic in American archeology. Not only can archeologists learn from what natural conservationists and architectural preservationists have done, but also there is much to be gained

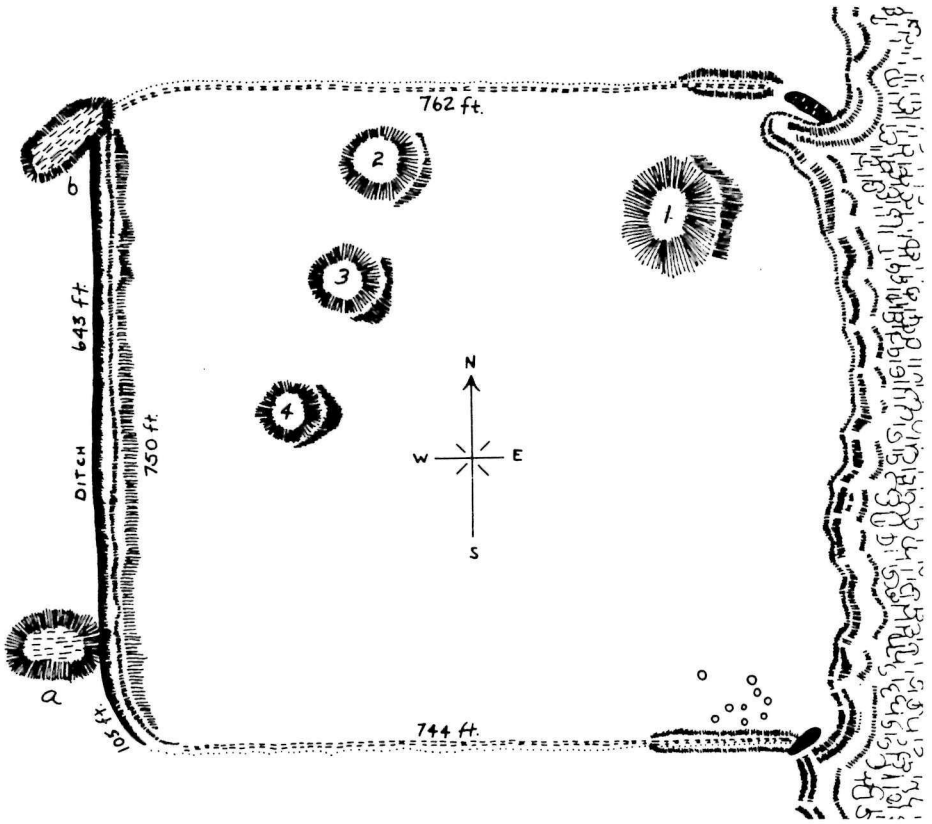

Photo: Courtesy of the Archaeological Conservancy.

A 19-century map of the Middle Mississippian Powers Fort in Butler County, Missouri. Along with adjacent virgin bald cypress swamp, the fort was recently acquired by the Archaeological Conservancy.

through cooperative projects that will preserve all the important irreplaceable resources of an area, including the archeological resources.

Bibliographical Note

For further reading and study of rural conservation issues, the National Trust's information sheet on rural conservation (Stokes and Getty 1979) contains a short, selected annotated bibliography. The Urban Land Institute's *Environmental Comment* publications (1978a, 1978b) on transferable development rights and the preservation of prime agricultural land contain selected annotated bibliographies on these topics. The Heritage Conservation and Recreation Service's multivolume *National Urban Recreation Study* is a valuable source of further information on legal tools for the preservation of open space in rural and urban areas. Volume I, containing technical reports 1–5, includes discussions of greenline parks, differential assessment, easements, and zoning. Volume III, containing technical report 13, includes an extensive bibliography on open-space and recreational land. The Executive Report volume contains a shorter version of this bibliography.

HCRS' new publication *New Directions in Rural Preservation* contains essays on preservation issues and techniques, and tools related to historic, natural, and recreation resources in rural areas. It is scheduled to be available in November 1980.

Acknowledgments

I would like to thank Mark Barnes for permission to use excerpts from a forthcoming article, Joe Getty for a draft copy of the information sheet on rural conservation, John Jameson for information on the California Environmental Quality Act, Bert Salwen for guidance on content, and Jeanette Blake, Gregory Andrews, Robert Edwards, William Green, Steven LeBlanc, Ronald May, Robert Seway, Glenn Tiedt, and Valerie Talmage who all made important contributions.

References

Barnes, Mark
1979, "Preservation of Archeological Sites Through Acquisition." Manuscript. Forthcoming in *American Antiquity*.

*Bosselman, Fred; Callies, David; and Banta, John
1973. *The Taking Issue*. Washington, D.C.: Council on Environmental Quality. Available from the US Government Printing Office, Washington, DC 20402. GPO Stock No. 041–011–00017–3; price $4.

Bradley, Darby
1976. *Charitable Gifts of Land: Their Tax Implications*. Available from the Vermont Natural Resources Council, 26 State Street, Montpelier, VT. 05602. $1.50.

Brenneman, Russell
1967. *Private Approaches to the Preservation of Open Land*. New London, Conn.: The Conservation and Research Foundation.

1975. "Should Easements be Used to Protect National Historic Landmarks? A Study for the National Park Service." Hartford, Conn.: Copp, Brenneman, Tighe, Koletsky, and Berall.

*1975–1976. "Historic Preservation Restrictions: A Sampling of State Statutes." *Connecticut Law Review* 8 (2): 231–247. $4.50.

City of Larkspur, California
1977. Ordinance 571: An Ordinance of the City of Larkspur Providing a Procedure for the Study and/or Preservation of Valuable Archaeological Resources in the City of Larkspur. Larkspur Municipal Code 15.42.

City of Oklahoma City
n.d. Article VII Historical Landmark Ordinance (new). *Oklahoma City Code*. Manuscript.

Comptroller General of the United States
1979. *The Federal Drive to Acquire Private Lands Should be Reassessed*. Report No. CED–80–14. Washington, D.C.: US General Accounting Office.

Cosotonis, John J.
1974. *Space Adrift: Landmark Preservation and the Marketplace*. Urbana, Ill.: University of Illinois Press.

Coughlin, Robert E.; Plaut, Thomas; and Strong, Ann L.
1978. The Use of Land Acquisition Methods for the Preservation of Urban Open Space. *National Urban Recreation Study*. Volume 1, technical report 4. Washington, D.C.: Heritage Conservation and Recreation Service, US Department of the Interior.

Coughlin, Robert E.; Berry, David; and Plaut, Thomas
1978. Differential Assessment of Real Property as an Incentive to Open Space Preservation and Farmland Retention. *National Urban Recreation Study*. Volume 1, technical report 3. Washington, D.C.: Heritage Conservation and Recreation Service, US Department of the Interior.

Einsweiller, Robert C., Inc.
1978. Use of Regulatory Powers in Protecting Urban Open Space. *National Urban Recreation Study*. Volume 1, technical report 5. Washington, D.C.: Heritage

Conservation and Recreation Service, US Department of the Interior.

Fox, Timothy
1979. *Land Conservation and Preservation Techniques.* Washington, D.C.: Heritage Conservation and Recreation Service, US Department of the Interior.

n.d.1. *Land. . .The Gift that Continues to Give.* Washington, D.C., and Jefferson City, Mo.: Heritage Conservation and Recreation Service, US Department of the Interior and the Missouri Department of Natural Resources.

n.d.2. *Land. . .Contributions to North Dakota's Future.* Washington, D.C., and Mandan, N. Dak.: Heritage Conservation and Recreation Service, US Department of the Interior and the North Dakota State Parks and Recreation Department.

n.d.3. *Protecting Wyoming's Heritage . . .Gifts of Land For Conservation.* Washington, D.C., and Cheyenne, Wyo.: Heritage Conservation and Recreation Service, US Department of the Interior and the Wyoming Recreation Commission and Wyoming Game and Fish Department.

*French and Pickering Creeks Conservation Trust, Inc.
1974. *Proceedings of the Conference on the Voluntary Preservation of Open Space.* Pottstown, Penn.: French and Pickering Creeks Conservation Trust, Inc. $5.

*Gammage, Grady Jr.; Jones, Phillip N.; and Jones, Stephen L.
1975. *Historic Preservation in California: A Legal Handbook.* Stanford, Calif.: Stanford Environmental Law Society and the National Trust for Historic Preservation. $3.95.

*Goetsch, Charles G.
1975–1976. "Conservation Restrictions: A Survey." *Connecticut Law Review* 8 (2): 383–409. $4.50.

Heritage Conservation and Recreation Service
1978a. Bibliography. *National Urban Recreation Study.* Volume 3, technical report 13. Washington, D.C.: Heritage Conservation and Recreation Service, US Department of the Interior.

1978b. *Executive Report: National Urban Recreation Study.* Washington, D.C.: Heritage Conservation and Recreation Service, US Department of the Interior.

1978c. Urban Open Space—Existing Conditions, Opportunities, and Issues. *National Urban Recreation Study.* Volume 1, technical report 1. Washington, D.C.: Heritage Conservation and Recreation Service, US Department of the Interior.

1979. *The Secretary of the Interior's Standards for Historic Preservation Projects.* Washington, D.C.: Heritage Conservation and Recreation Service, US Department of the Interior.

Higgens, Joseph F.
1972. Easements for Wild and Scenic Rivers: Advance Planning Aids Administration of Clearwater Systems. *Journal of Forestry (December).*

Klein, John V. N.
1978. "Preserving Farmland on Long Island." *Environmental Comment* (January), pp. 11–13.

Koch, Lisa A.
1977. "State and Federal Tax Incentives for Historic Preservation." *Cincinnati Law Review* 46:833–845.

Kusler, Jon A.; and Duddleson, William
1977. Alternative Federal Strategies for Strengthening State and Local Urban Outdoor Recreation and Open Space Programs Including the Establishment of Greenline Parks. *National Urban Recreation Study.* Volume 1, technical report 2. Washington, D.C.: Heritage Conservation and Recreation Service, US Department of the Interior.

*Kyre, Kenneth (Editor)
1976. "Bibliography of Legal Periodicals Dealing with Historic Preservation and Aesthetic Regulation." *Wake Forest Law Review* 12(1): 275–281. $5.75.

Photo: Courtesy of the Archaeological Conservancy.

This mica eagle claw is the type of artifact found at Hopewell Mounds, near Chillicothe, Ohio.

LeBlanc, Steven
1979. "A Proposal for an Archeological Conservancy." Manuscript. Prepared by the Mimbres Foundation. Available from The Archeological Conservancy, 236 Montezuma, Santa Fe, NM, 87501.

Maryland Environment Trust
1977. *To Preserve a Heritage: Conservation Easements.* Revised edition. Baltimore, Md.: Maryland Environmental Trust. Available from the publisher at Suite 1401, 501 St. Paul Place, Baltimore, MD 21202.

Maryland Historical Trust
1975. *Preservation Easements.* Annapolis, Md.: Maryland Historical Trust.

Massachusetts Association of Conservation Commissions
1978. *Environmental Handbook for Massachusetts Conservation Commissioners.* 1978 edition. Medford, Mass.: Massachusetts Association of Conservation Commissions. Available from publisher at Lincoln Filene Center, Tufts University, Medford, MA 02155.

McGimsey, Charles R. III
1972. *Public Archeology.* New York: Seminar Press.

National Trust for Historic Preservation
1979a. "Number of Landmarks and Historic Commissions Mushrooms." *News Service* 11 (3): 4.

1979b. Editorial: "Elections '79." *Preservation News* 19 (12): 4.

Nature Conservancy
1976. *The Nature Conservancy.* Arlington, Va.: The Nature Conservancy. Available from the publisher at 1800 N. Kent Street, Arlington, VA 22209.

Pizor, Peter J.
1978. "New Jersey's TDC Experience." *Environmental Comment* (April), p. 11.

Pohle, Linda; and Tiedt, Glenn F.
n.d. *How to Donate Land in Colorado.* Denver, Colo.: Colorado Open Land Foundation. Available from the publisher at P.O. Box 925, Denver, CO 80201.

Priewert, Fred A.
n.d. *Land. . .The Lasting Legacy of Open Space.* Des Moines, Ia. and Washington, D.C.: Iowa Conservation Commission and Heritage Conservation and Recreation Service, US Department of the Interior.

Richman, Hershel J.; and Kendig, Lane H.
1978. "Transferable Development Rights—A Pragmatic View. *Environmental Comment* (April), pp. 4–7.

Sampson, R. Neil
1978. "Development on Prime Farmland." *Environmental Comment* (January), pp. 4–6.

Scheller, William G.
1979. "Preserving Agricultural Land: How Massachusetts is Attacking a Growing Land-Use Problem." *Sierra* 64 (1): 70.

Shull, Joe A.
1975–1976. "The Use of Tax Incentives for Historic Preservation." *Connecticut Law Review* 8 (2): 334–347.

*Stokes, Samuel N.; and Getty, Joe
1979. "Rural Conservation." *Information* 19. Available from the National Trust for Historic Preservation. Single copies free from regional offices; bulk orders, $1.50 each from National Trust Bookshop.

Stover, Emily Jane, Editor
1975. *Protecting Nature's Estate: Techniques for Saving Land.* Albany, N.Y. and Arlington, Va.: New York State Office of Parks and Recreation and the Nature Conservancy. Published in conjunction with the Bureau of Outdoor Recreation, US Department of the Interior.

Urban Land Institute
1978a. "Preservation of Prime Agricultural Land." *Environmental Comment* (January).

1978b. "The Future of Transferable Development Rights." *Environmental Comment* (April).

*Available from the National Trust for Historic Preservation Bookshop, 1600 H Street, NW, Washington, DC 20006. Payment must accompany order; please add $1.50 for postage and handling. National Trust members may deduct 10 percent from purchase cost.

☆ U.S. GOVERNMENT PRINTING OFFICE: 1980 O— 628-983/2775 REGION 3-1

HCRS
U.S. Department of the Interior
Heritage Conservation and Recreation Service
440 G Street, NW
Washington, DC 20243

Official Business

Postage and Fees Paid
U.S. Department of the Interior
INT. 419