

Exhibit A: Sample Request to the NAHC for Tribal Contact Information

	<p>LOCAL GOVERNMENT TRIBAL CONSULTATION LIST REQUEST NATIVE AMERICAN HERITAGE COMMISSION 915 CAPITOL MALL, ROOM 364 SACRAMENTO, CA 95814 (916) 653-4082 (916) 657-5390 - Fax</p>	
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Project Title: _____

Local Government/Lead Agency: _____ **Contact Person:** _____

_____ **Phone:** _____

Street Address: _____ **Fax:** _____

City: _____ **Zip:** _____

Project Location:

County: _____ **City/Community:** _____

Local Action Type:

- General Plan General Plan Element Specific Plan
 General Plan Amendment Specific Plan Amendment
 Pre-planning Outreach Activity

Project Description:

<p>NAHC Use Only</p> <p>Date Received: _____</p> <p>Date Completed _____</p>

Native American Tribal Consultation lists are only applicable for consulting with California Native American tribes per Government Code Section 65352.3.



 NORTHERN CALIFORNIA LAND TRUST

FACT SHEET

THE STEPS IN GRANTING A CONSERVATION EASEMENT

Who may grant an easement and to whom can they grant it?

A property owner can grant a conservation easement over all or a portion of his or her property. If the property belongs to more than one person, all owners must consent to granting the easement. If the property is mortgaged, the owner must obtain an agreement from the lender to subordinate its interests to those of the easement holder so that the easement cannot be extinguished in the event of foreclosure.

If the easement donor wishes to claim tax benefits for the gift, he or she must donate or sell it for less than fair market value to a public agency or to a conservation organization or historic preservation organization that qualifies as a public charity under Internal Revenue Code Section 501(c)(3). Most land trusts meet this criterion.

What are the steps in the transaction?

1. Initial contact between the property owner and the conservation organization.

A property owner usually initiates contact, requesting information from the conservation organization on the process for recording a conservation easement. The conservation organization will generally ask questions to determine if the property meets the criteria established by the organization for such projects. This is also the point at which the landowner's desire for the property and financial goals are identified. The transaction process is generally laid out for the landowner, and may vary somewhat from the steps outlined herein. At this point, the conservation organization will also generally explain its policy for a contribution to an endowment fund for managing the easement.

2. Consult with legal and tax advisors.

If the parties decide to proceed with the easement, the conservation organization will always advise the property owner to seek legal and tax advice. While conservation organizations generally will assist landowners wherever possible in the transaction, and can often refer him or her to qualified professionals, they cannot provide such advice to landowners.

3. Conduct a tour of the property with the landowner.

The tour serves two purposes. First, the conservation organization will want to confirm that the potential easement truly meets their program goals. Second, the organization will want to discuss the resources on the property with the landowner and identify potential uses and restrictions on the property.

4. Obtain title information.

This information serves several purposes:

- It identifies the legal owner(s) of the property.
- It furnishes the legal property description that is included in both the baseline data inventory and the easement document.
- It identifies any liens and encumbrances on the property, which may need to be subordinated to the conservation easement (e.g. mineral rights, existing right of ways).

5. Compile baseline data inventory of property.

The conservation organization will study and record the condition of the property, including such information as vegetative communities, water courses, existing uses, significant habitat, and fences, roads and other structures. The information is generally mapped with accompanying narrative and photographs.

This inventory serves three purposes:

- Establishes the types and location of resources on the site that should be addressed by restrictions in the easement.
- Establishes the condition of the property at the time of the gift, as required by the IRS when an easement donor retains rights that, if exercised, could impair the conservation values of the property.
- Establishes a baseline for monitoring the easement.

6. Develop the purpose statement.

This statement identifies the conservation values to be protected, is the cornerstone of the easement, and serves four functions:

- It identifies which of the five IRS categories of conservation easements is addressed (this is required for IRS deductibility).

- Any future change in use not specifically allowed under the language of the easement will be evaluated per its consistency with protection of the conservation values identified in the statement of purpose.
- A court will look to the purpose statement in determining conformance of activities to the easement.
- The purpose statement will guide monitoring methods.

The specificity of the purpose statement will depend on the resource be protected. For example, where an easement is established to protect a specific species (e.g. salmon), the purpose statement will include reference to the species, and perhaps the life stage (e.g. migration, spawning and rearing). Alternatively, an agricultural easement may include a general purpose statement regarding the general importance of agriculture at the local, regional, and state level and the importance of the particular property within that framework.

7. Design the conservation easement.

In identifying the easement, two issues should be considered:

- How does the area to be protected function?
The analysis of the area's function will be based on the type of resource being protected. For example, where the purpose of the easement is to protect an aquatic ecosystem (e.g. stream, wetland or riparian), hydrologic links upland and upstream will need to be considered. If protecting an endangered species, its habitat needs must be identified. A similar analysis can be conducted for an agricultural operation, identifying water source, type of crop, timing of operations, and external impacts (e.g. dust and pesticide drift).
- What are the adjacent uses and their impacts?
Residential development will have different impacts on a protected area than commercial. Both the built environment and daily activities need to be taken into account. Issues to be analyzed include changes in water quality and flow patterns, use of exotic plant materials, noise, and daily patterns of use.

8. Develop uses and restrictions.

This step in the process addresses three sections of the easement: rights of the grantee, prohibited uses and reserved rights.

Rights of the grantee. The scope of rights conveyed to the grantee depends on the type of easement in question. Recreational or educational easements, for example, might contain highly detailed descriptions of permitted activities, circumscribed by specific conditions and qualifications and confined to precisely delineated time periods. Natural ecosystem

easements, on the other hand, might delegate broad authority to the grantee to manage or maintain the property and to make its own determination regarding access. The greater the degree of public access or management control conveyed by an easement, the greater a grantee's potential liability .

A grantee's rights generally include a broad statement regarding protection of the conservation values of the property. Where the easement covers an area that will continue in productive use (e.g. agriculture), the grantee's rights section usually includes a statement requiring the exercise of those rights without undue interference with the landowner's use and quiet enjoyment of the property. The grantee's rights section almost always includes reference to the grantee's ability to monitor the easement and pursue remedies for violations.

Prohibited uses. It is important to remember that a conservation easement can only prohibit; it cannot prescribe action. Therefore, the prohibited uses section is where the real work of protecting the conservation values is done. Conservation easements generally spell out a specific list of prohibited uses. However, the easement may allow certain prohibited uses in restricted areas covered by the easement. Each restriction is negotiated on a case-by-case basis for a particular property. Since every eventuality cannot be anticipated, conservation easements usually include a general prohibition on all uses inconsistent with the purpose of the easement, and reserve to the grantor the right to engage in all uses that are not inconsistent. Usually, the restrictions address one or more of the following issues:

- subdivision and development;
- commercial or industrial use;
- new and existing buildings, structures, roads, and other improvements;
- alteration of the land surface;
- mineral development;
- waste dumps;
- utility lines;
- signs;
- soil and water;
- wetlands;
- wildlife and wildlife habitat; and
- trees, shrubs, and other vegetation.

Reserved rights. As a matter of law, the reserved rights of the grantor are generally all those rights of the landowner not expressly conveyed to the grantee. This section will often expressly reserve certain rights to the landowner, such as continued agricultural use, construction of a certain number of residences in certain locations, etc. However,

consistency with the purpose of the easement is the test of whether a landowner has a right that has not been expressly reserved in the easement.

9. Develop monitoring requirements.

The grantee's ability to monitor the easement is provided for in the "Rights of the Grantee" section. Monitoring can be of two types: compliance monitoring and biological monitoring. Most easements provide for compliance monitoring, and certain remedies should violations of the easement's terms be found. The easement may be specific about the timing and methods of monitoring, or may only state that monitoring is allowed, with a requirement that it be conducted with reasonable notice. The baseline data inventory serves as the starting point for compliance monitoring. The baseline data inventory is also a baseline for biological monitoring, conducted where a conservation organization wishes to determine if the purpose of the easement is being fulfilled. In this case, monitoring would not lead to enforcement actions, but might lead to changes in the conservation organization's future easements.

10. Sign and record the easement.

11. Obtain a qualified appraisal.

An appraisal is only necessary if the landowner wishes to claim a tax deduction for the value of a donated or bargain sale easement. Obtaining the appraisal is the landowner's responsibility, although land trusts are usually able to refer him or her to a qualified appraiser.

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