

tools for CRMs

From National Preservation Institute's website www.npi.org 9/26/05

Model Language for Title Restrictions To Use in Transfer of Historic Properties

The following language is based on language developed for the Advisory Council on Historic Preservation's education and training program, as adapted by the author.

Introduction

Protective title restrictions are notoriously difficult to enforce. It is imperative that they be designed with the assistance of an attorney knowledgeable in the real estate laws of the jurisdiction within which the transfer is to take place. The provisions of such laws vary widely from place to place.

Following is an EXAMPLE of a restriction, in the form of a covenant. It consists of a "shell" covenant with several different kinds of "fillings" designed for use with different kinds of properties. **DO NOT FOLLOW THIS EXAMPLE SLAVISHLY. BE SURE YOUR RESTRICTIONS ARE CONSISTENT WITH, AND ENFORCEABLE UNDER, THE REAL ESTATE LAWS OF THE STATE AND/OR LOCAL JURISDICTION.** Be sure to attach the restriction to the MOA, PA, or other agreement document, and be sure to identify who will hold and enforce the restriction (in the below model, the "Covenantee").

Model Covenant

WHEREAS, the Historic Preservation Trust of Western Washafornia (hereinafter "Covenantee") is a non-profit corporation under Section 501 (c) (3) of the Internal Revenue Code of 1986 as amended, and

WHEREAS, Covenantee is authorized to accept and easements and covenants to protect places significant in local history and culture under the provisions of Title III, Section 776(m)(14) of the Washafornia Public Resources Code (hereinafter, "Title III," and

WHEREAS, the Federal Bureau of Fish Housing (hereinafter, "Bureau"), by its grant and conveyance of certain property rights hereunder to Big Ditch Development Corporation, Inc. (hereinafter "Covenantor") wishes to transfer to Covenantee hereinabove designated preservation covenants in and to that Property which is the subject of this conveyance (hereinafter the "Property"), and Covenantor, for itself and its heirs, administrators, devisees, successors, and assigns is willing to acquire and accept the Property subject to such covenants; and

WHEREAS, the administration and enforcement of these preservation covenants by Covenantee will assist in preserving the historic and cultural values of the Property;

NOW THEREFORE, Covenantor hereby covenants on behalf of itself and its heirs, administrators, devisees, successors, and assigns with Covenantee at all times to be bound by the following restrictions:

Here insert property-specific restrictions, such as:

- Model Archeological Restrictions
- Model Traditional Cultural Property Restrictions

REVISE AND ADD AS APPLICABLE TO MODELS # ____. Covenantee shall be permitted by the Covenantor at all reasonable times to inspect the Property, (including its interior spaces, in order to ascertain if the above conditions are being observed. (14) *where applicable, "Covenantor agrees that inspections may, at the discretion of Covenantee, include entry into the interior of the Structure"*. The right of inspection shall include the right to take photographs, make drawings, and prepare written descriptions of the Property for the purpose of documenting the appearance, condition, and uses of the Property at the time of inspection.

____. In the event of a violation of these covenants, in addition to any remedy now or hereafter provided by law, Covenantee may, following reasonable notice to Covenantor, institute suit to enjoin said violation and to require, at the expense of Covenantor, the restoration of the Property to the condition and appearance required under these covenants. The successful party shall be entitled to recover all costs or expenses incurred in connection with such a suit, including all court costs and attorney's fees.

____. Covenantor agrees that Covenantee may at its discretion, without prior notice to Covenantor, convey and assign all or part of its rights and responsibilities contained herein to a unit of federal, state, or local government or to a local, state, or national organization which is qualified under Title III and any successor provisions or under federal law to accept such rights and responsibilities.

____. These covenants shall be deemed to run with the land as covenants at law and equitable servitude, and extend to and are binding on Covenantor and Covenantee, and their respective heirs, administrators, devisees, successors, and assigns. The words "Covenantor" and "Covenantee" shall include all such persons, agencies, entities, and the like. The restrictions, stipulations, and covenants contained herein shall be inserted by Covenantor verbatim in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the Property or any part thereof.

____. The failure of Covenantee to exercise any right or remedy granted under this instrument with respect to any particular violation of these covenants shall not have the effect of waiving or limiting the exercise of such right or remedy with respect to the identical (or similar) type of violation at any subsequent time or the effect of waiving or limiting the

__. The invalidity or unenforceability of any provision of this instrument shall not affect the validity or enforceability of any other provision of this instrument or any ancillary or supplementary agreement relating to the subject matter hereof.

Optional provisions for archeological sites

#. Except as hereinafter provided, Covenantor shall keep the Sandy Sondage Site (Site), as described and mapped in the report entitled: "A Deep Subject: the Sandy Sondage Site" (Marshall and Towne 1999; hereinafter the Deep Report) in its existing state in order to preserve its archeological value, and to that end, except as otherwise provided herein, Covenantor shall neither perform nor permit others to perform any of the following within the boundaries of the site as shown in Figure 17A of the Deep Report:

Note: Following are examples only

- placement of any earth, gravel, or similar substance on, above or below the ground.
- excavation or removal of any earth material, plant material, mineral substance or other substance or material, (except archeological resources retrieved pursuant to a research design approved in writing by Covenantee.
- construction of any building or placement of any other structure on, above or below the ground surface.
- conduct of any field investigation for any purpose, except field surveys and subsurface investigations authorized in writing by Covenantee;"
- any other activity which by disturbing, altering or otherwise affecting the existing surface or subsurface of the Site that would be detrimental to the appropriate preservation of the Site.

#_ Notwithstanding the above, disturbance of the ground surface or any other thing may be undertaken or permitted to be undertaken on the with the express prior written permission of Covenantee, signed by a fully authorized representative thereof. Should Covenantee require, as a condition of the granting of such permission, that Covenantor or the recipient of such permission conduct archeological data recovery operations or other activities designed to mitigate the adverse effect of the proposed activity on the Site, Covenantor shall ensure that such activities are carried out at no cost to Covenantee. Covenantor and Covenantee shall ensure that any archeological data recovery carried out is consistent with the Secretary of the Interior's Standard Guidelines for Archeological Documentation (48 FR 44734-37), and such other standards and guidelines as Covenantee may specify, including but not limited to standards and guidelines for research design, field work, analysis, preparation and dissemination of reports, disposition of artifacts and other materials, consultation with Native American or other organizations, and re-interment of human remains.

#_ Covenantor shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing the Site, and shall promptly report any such disturbance to Covenantee.

Optional provisions for traditional cultural properties

#. Except as hereinafter provided, Covenantor shall keep the Origin Cave, as described and mapped in the records of the Motomak Tribe and summarized in Covenantor's geographic information system (GIS), in its existing state in order to preserve its cultural value to the Motomak people, and to that end, except as otherwise provided herein, Covenantor shall neither perform nor permit others to perform any of the following:

Note: Following are examples only

- interrupt, interfere with, or discourage access to the Origin Cave by members of the Motomak Tribe and their guests.
- erect, construct, or move anything that would be visible from the mouth of the Origin Cave, without the express written permission of the Motomak Tribal Council and Covenantee.
- display signs, billboards, awnings or advertisements that would be visible from the mouth of the Origin Cave; provided, however, that Covenantor may, with prior written approval from and in the jointly exercised discretion of Covenantee and the Motomak Tribal Council, erect such signs or awnings as are compatible with the preservation and conservation purposes of this easement and appropriate to discourage trespass on, damage to, or inappropriate public use of the Origin Cave and its vicinity.
- make any public announcement of activities of the Motomak Tribe that are planned to take place at Origin Cave, without the express written permission of the Motomak Tribal Council.
- place any earth material, gravel, or other material on, above or below the ground within view from the mouth of Origin Cave.
- excavate or remove any earth material, plant material, mineral substance or other substance or material, except by Motomak Tribal members for purposes of medicine gathering or other cultural purposes.
- construct any building or place any other structure on, above or below the ground surface, except sweatlodes and other temporary structures built by Motomak religious or cultural practitioners.
- conduct archeological or anthropological field studies for any purpose at Origin Cave, except when Covenantee certifies in writing that permission for such a study has been given by the Motomak Tribal Council.
- any other activity which by disturbing, altering or otherwise affecting the Origin Cave or its vicinity would be detrimental to the appropriate preservation of Origin Cave's traditional cultural value.

#. Covenantor shall make every reasonable effort to prohibit any person from vandalizing or otherwise disturbing Origin Cave, and shall promptly report any such disturbance to Covenantee and the Motomak Tribe.