

Prepared for The Cultural Conservancy  
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*Sample Draft*

**DEED OF CULTURAL CONSERVATION EASEMENT**

THIS GRANT DEED OF CULTURAL CONSERVATION EASEMENT is made this \_\_\_\_\_ day of \_\_\_\_\_ by \_\_\_\_\_ (*Whoever is giving this*) \_\_\_\_\_ ("Grantor"), a corporation (*or individual*) qualified to do business in the State of California, having an address at \_\_\_\_\_, in favor of \_\_\_\_\_ (*Whoever is getting this*) \_\_\_\_\_ ("Grantee"), a qualified California nonprofit corporation having an address at \_\_\_\_\_).

WITNESSETH:

WHEREAS, Grantor is the sole owner in fee simple of certain real property known as \_\_\_\_\_ located in \_\_\_\_\_ (*describe*) \_\_\_\_\_ in \_\_\_\_\_ County, California and more particularly described in Exhibit A, a map attached hereto and incorporated by this reference ("the Property"); and

WHEREAS, the property possesses significant cultural, historic and (*natural or other*) values (collectively "cultural conservation values") of great importance to Grantor, to the (*specific tribe or group*) and other native people of the region, and the people of the State of California; and

WHEREAS, the specific cultural and natural conservation values of the Property are further documented in an inventory of relevant features of the Property, ("Baseline Documentation") (*or which are described in an exhibit which is incorporated into the easement and recorded*) which are not recorded

with this Deed but shall remain in the files at the offices of both the Grantor and Grantee, including reports, maps, photographs, declarations, and other documentation which generally describes the property at the time of the grant of the easement, and

WHEREAS, in particular, the property has values as (*describe the kind and qualities of the property such as ...*) a natural forest and mountain ecosystem, including springs, rock formations, trees, native plants, birds, wildlife, and other ecological and geological features, and moreover, the property has important cultural values as a traditional place of gathering, ritual, ceremonial and archeological significance from (*scope of time*) thousands of years of continuous use by the (*native group*), and the combination of these natural and cultural values are referred to herein as "cultural conservation values"; and

WHEREAS, Grantor intends that both the natural and cultural conservation values of the Property be preserved and maintained by the continuation of the rights of the Grantor existing at the time of this grant that do not significantly impair or interfere with those values; and

WHEREAS, Grantor further intends, as owners of the Property, to convey to Grantee the right to have access to the property for cultural and ceremonial use and to preserve and protect the cultural conservation values of the Property in perpetuity; and

WHEREAS, Grantee (*Organization*) is a publicly supported, tax-exempt nonprofit organization, qualified under Section 501(c)(3) of the Internal Revenue Code, whose primary purpose is natural and cultural historic preservation and educational; and

WHEREAS, Grantee agrees by accepting this grant to honor the intentions of Grantor stated herein and to preserve and protect in perpetuity the cultural conservation values of the Property for the benefit of this generation and generations to come;

NOW, THEREFORE, in consideration of the above and the mutual covenants, terms, conditions, and restrictions contained herein, and pursuant to

the laws of the State of California and California Civil Code Section 815 et. seq., Grantor hereby voluntarily grants and conveys to Grantees a conservation easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth ("Easement") and Grantees accept the Easement and agree to honor the intentions of the Grantor to preserve and protect the Property.

1. Purpose. It is the purpose of this Easement to protect the (*state values such as sacred sites of the group*) located on the property, to honor them and protect them forever and to assure that the Property will be retained forever in its natural state and for its cultural conservation values and to prevent any use of the property which would significantly impair or interfere with the cultural conservation values of the Property. Grantor intends that this Easement will confine the use of the property to activities to those that are consistent with the purpose of this Easement.

2. Rights of Grantees. To accomplish the purpose of this Easement the following rights are conveyed to Grantees by this Easement:

(a) To identify, document, preserve and protect the cultural conservation values of the Property; and

(b) To enter upon the Property at reasonable times, and for a reasonable duration, without notice to the Grantor, in order to carry out cultural practices consistent with the purpose of the Easement; and

(c) To enter upon the Property at reasonable times, in order to monitor Grantor's compliance with and otherwise enforce the terms of this Easement; provided that such entry for monitoring purposes shall be upon prior reasonable notice to Grantor, and Grantees shall not unreasonably interfere with Grantor's use of the Property; and

(d) To protect the Property from any activity on or use of the Property that is inconsistent with the purpose of this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use, pursuant to paragraph 6.

3. Prohibited Uses. Any activity on or use of the Property inconsistent with the purpose of this Easement is prohibited. Without limiting the generality of the foregoing, the following activities and uses are expressly prohibited:

(a) Any and all logging, mining, commercial use, development or resource extraction, road building or surface disturbance of the Property.

(b) Any and all hunting, camping, and recreational uses of the Property that are inconsistent with the intent of this Easement, including the use of fire without the mutual consent of the parties. Occasional ceremonial use of the site is a use that is deemed consistent with the intent of the Easement.

(c) Grantor and Grantee shall cooperatively enforce prohibited used of the Property by other parties or the general public.

*(Add others here or in Exhibit.)*

4. Reserved Rights. Grantors reserve to themselves, and to their representatives, heirs, successors, and assigns, all rights accruing from their ownership of the Property, including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein and are not inconsistent with the purpose of this Easement. Without limiting the generality of the foregoing, the following rights are expressly reserved:

(a) Grantor has the right to practice prudent and generally accepted forest management activities on land of the Grantor outside the Property and the full and unhindered use of existing and future roads on lands of the Grantor outside of or bordering on the Property.

*(Add other rights)*

#### 4.1 Limitations on Grantor's Responsibilities.

(a) Grantor shall not be responsible for and unlawful actions of the Grantee or Grantee's representatives. *(This is not needed, negotiated term.)*

(b) Grantor assumes no actual or implied responsibility to insure that road conditions allow vehicular access to the Property. *(Sample of negotiated term.)*

5. Notice of Intention to Undertake Certain Permitted Actions. The purpose of requiring Grantor to notify Grantees prior to undertaking certain permitted activities, is to afford Grantees an opportunity to ensure that the activities in question are designed and carried out in a manner consistent with the purpose of this Easement. Whenever notice is required Grantor shall notify Grantees in writing not less than 30 (thirty) days prior to the date Grantor intends to undertake the activity in question. The notice shall describe the nature, scope,

design, location, timetable, and any other material aspect of the proposed activity in sufficient detail to permit Grantees to make an informed judgment as to its consistency with the purpose of this Easement.

5.1 Grantee's Approval. Where Grantees' approval is required, Grantees shall grant or withhold its approval in writing within 30 (thirty) days of receipt of Grantor's written request therefor. Grantees' approval may be withheld only upon a reasonable determination by Grantees that the action as proposed would be inconsistent with the purpose of this Easement. Should no written response by the Grantee be offered within the thirty day period, Grantor may proceed with the action but Grantee's approval rights are not waived.

6. Grantees' Remedies. If Grantees determine that Grantor is in violation of the terms of this Easement or that a violation is threatened, Grantees shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Property so injured. If Grantor fails to cure the violation within 30 (thirty) days after the receipt of notice, or under circumstances where the violation cannot reasonably be cured within a 30 (thirty) day period, Grantor fails to begin curing the violation within the 30 day period, or fails to continue diligent efforts to cure such violation until finally cured, Grantees may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, to recover any damages to which it may be entitled for violation of the terms of this Easement, including damages for loss of natural, cultural, scenic, aesthetic, or environmental values, and to require the restoration of the Property to the condition that existed prior to any such injury. Without limiting Grantor's liability therefor, Grantees, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property. If Grantees, in their sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the cultural conservation values of the Property, Grantees may pursue their remedies under this paragraph without prior notice to Grantor or without waiting for the period provided for cure to expire. Grantees' rights under this paragraph apply equally

in the event of either actual or threatened violations of the terms of this Easement. Grantor agrees that since the cultural conservation values of the Property are of inestimable value and some may be intangible, that Grantees' remedies at law for any violation of the terms of their Easement may be inadequate and that Grantees shall be entitled to the injunctive relief described in this paragraph, both prohibitive and mandatory, in addition to such other relief to which Grantees may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies. Grantees' responsibility to monitor and conserve the cultural conservation values of the Property are hereby recognized as being unique and the fact that some of these values are intangible is understood, and thus the necessity of proving the pertinent cultural values of the property will not be required in pursuing Grantees' remedies under this Easement. Grantees' remedies described in this paragraph shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. Liquidated damages are not provided for in this Easement.

6.1 Costs of Enforcement. Any costs incurred by Grantees in enforcing the terms of this Easement against Grantor, including without limitation, costs of suit and attorney's fees, and any costs of restoration necessitated by Grantor's violation of the terms of this Easement shall be decided by Grantees' remedies at law, or equity.. If Grantor prevails in any action to enforce the terms of this Easement, Grantor's costs of suit including, without limitation, attorney's fees shall be also born by Grantor, in recognition of the fact that Grantee is a small nonprofit cultural preservation organization which does not have the financial resources to pay Grantor's costs and fees in any legal action.

6.2 Grantees' Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantees, and any forbearance by Grantees to exercise their rights under this Easement shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantees' rights under this Easement. No delay or omission by Grantees in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy, or be construed as a waiver.

6.3 Waiver of Certain Defenses. Grantor hereby waives any defense of laches,

estoppel, or prescription.

6.4 Acts Beyond Grantor's Control. Nothing contained in this easement shall be construed to entitle Grantees to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent abate, or mitigate significant injury to the Property resulting from such causes. Grantor will, wherever possible, not stage or allow the staging of fire fighting on the Property itself, or allow any fire suppression controls that adversely impact the Property or destroy the cultural conservation values.

7. Access. No right of access by the general public to any portion of the Property is conveyed by this Easement.

8. Costs and Liabilities. Grantor retains all responsibilities and shall bear all costs and liabilities of any kind related to the ownership, operation, upkeep, and maintenance of the Property, including the maintenance of adequate comprehensive general liability insurance coverage. Grantor shall keep the Property free of liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

8.1 Taxes. Grantor shall pay before delinquency all taxes, assessments, fees and charges of whatever description levied on or assessed against the Property by competent authority (collectively "taxes"), including any taxes imposed upon, or incurred as a result of this Easement, and shall furnish Grantee with satisfactory evidence of payment, upon request. It is intended that this Easement constitutes an enforceable restriction within the meaning of Article XIII, Section 8 of the California Constitution and that this Easement qualifies as an enforceable restriction under the provisions of California Revenue and Taxation Code Section 402.1 or successor statute.

8.2. Hold Harmless. *(Custom language used here, samples of other clauses are included in cultural conservation easement training manual.)*

It is the intent of the parties that by conveyance of this Easement, no additional risk or liability is assumed by either Grantor or Grantee for any actual

or alleged injury, death or property damage from any act, omission, condition or other matter related to or occurring on or about the Property, and that any liability that may exist at the time of the conveyance of the Easement continues and that the parties will continue to be governed by existing law, thus both parties agree not to hold the other harmless, or to indemnify each other, its members, directors, officers, employees, agents, and the individual Grantees' contractors and their heirs, agents, personal representatives, successors and assigns of each of them from and against liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including, without limitation, reasonable attorney's fees, arising from or in any way connected with the existence or administration of this Easement.

9. Extinguishment. If circumstances arise in the future such as render the purpose of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The amount of the proceeds to which Grantees shall be entitled, after the satisfaction of prior claims, from any sale, exchange, or involuntary conversion of all or any portion of the Property subsequent to such termination or extinguishment, shall be determined, unless otherwise provided for by California law at the time, in accordance with paragraph 9.1. Grantees shall use all such proceeds in a manner consistent with the cultural conservation purposes of this grant.

9.1 Proceeds. This Easement constitutes a real Property interest immediately vested in Grantees, which, for purposes of paragraph 9, the parties stipulate to have a fair market value determined by multiplying the fair market value of the Property unencumbered by the Easement (minus any increase in the value after the date of this grant attributable to improvements) by the ratio of the value of the Easement at the time of this grant to the value of the Property, without deduction for the value of the Easement, at the time of this grant. The values at the time of this grant shall be those values used to calculate the deduction for federal income tax purposes allowable by reason of this grant, pursuant to Section 170(h) of the Internal Revenue Code of 1954, as amended. For purposes of this paragraph, the ratio of the value of the Easement to the value of the Property unencumbered by the Easement shall remain constant. Furthermore, it is understood that the cultural value of the Property to Grantees, as a religious and ceremonial site is

inestimable, and can not, nor should not be quantified or included in this calculation. The values referred to in this paragraph will, in recognition of the impossibility of assigning a monetary value to the sacred nature of the sites, will only apply to land and natural resource values protected by this Easement and which can be included in a calculation of fair market value to the Property and thus, by the above ratio, to the Easement.

9.2 Condemnation. If the Easement is taken, in whole or in part, by exercise of the power of eminent domain, Grantees shall be entitled to compensation in accordance with applicable law. Grantees should be able to apply such compensation to the acquisition of another interest in land with has cultural significance to Grantee, including ownership in fee simple.

9.3 Amendment. If circumstances arise under which an amendment to or modification of this Easement would be appropriate, Grantor and Grantees are free to jointly amend this Easement; provided that no amendment shall be allowed that will affect the qualification of this Easement or the status of the Grantees under applicable laws, and any amendment shall be consistent with the purpose of this Easement, shall include reference to the significant cultural conservation values and be consistent with protecting those values and shall be perpetual in duration. Any such amendment shall be recorded in the official records of Shasta County, California.

10. Assignment. This Easement is transferable, but Grantees may assign its rights and obligations under this Easement only to an organization that is a qualified organization at the time of transfer, under Section 170(h) of the Internal Revenue Code of 1954, as amended, and the applicable regulations promulgated thereunder, and authorized to acquire and hold cultural conservation easement under Sections 815 et. seq. of the California Civil Code, or successor provision. Grantees shall require that the cultural conservation purposes that this grant is intended to advance, will continue to be carried out by any assignee. Grantee shall also notify Grantor in writing, and in advance of any assignment, and shall seek the approval of the Grantor to the assignment, but the right of assignment is exclusive to the Grantor, and shall not be abridged by Grantor.

11. Subsequent Transfers. Grantor agrees to incorporate the terms of this

Easement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the Property, including without limitation, a leasehold interest. Grantor further agrees to give written notice to the Grantees of the transfer of any interest at least sixty (60) days prior to the date of such transfer. The failure of the Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforcement in any way.

12. Estoppel Certificates. Upon request by Grantor, Grantees shall within thirty (30) days execute and deliver to grantor any document, including an estoppel certificate, which certifies Grantor's compliance with any obligation of Grantor contained in this Easement and otherwise evidences the status of this Easement as may be requested by Grantor.

13. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantees:

or to such other address as either party from time to time shall designate by written notice to the other.

14. Recordation. Grantees shall record this instrument in timely fashion in the official records of Shasta County, California, and may re-record it at any time as may be required to preserve rights in the Easement.

15. Executory Limitation. If Grantees shall cease to exist or cease to qualify or to be authorized to acquire and hold conservation easements under California Civil Code 815 et. seq. and a prior assignment is not made pursuant to paragraph 10, or refuse such rights and obligations, then the rights and obligations under this Easement shall vest in such organization as a court of competent jurisdiction shall direct pursuant to California law and with due regard to the requirements

for an assignment pursuant to paragraph 10, especially to the unique and significant character of the cultural values involved. Grantor may request relief from the court, in an action under this paragraph to void the Easement if Grantees or their assignees cease to be a qualified organization or refuse their rights and obligations under this Easement. Grantor agrees to give Grantee 60 (sixty) days notice of any intention to seek relief under this paragraph.

## 16. General Provisions.

a) Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of California.

b) Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of California Civil Code Section 815 et. seq.. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) Severability. If any provision of this Easement, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Easement, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement. This instrument sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement, all of which are merged herein. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with paragraph 9.3.

e) No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation. The obligations imposed by this Easement upon Grantor (if multiple grantors) shall be joint and several.

g) Successors. The covenants, terms, conditions, and restrictions of this Easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.

h) Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to the transfer shall survive transfer.

i) Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts. The parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both parties, each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto Grantee, its successors, and assigns forever.

IN WITNESS WHEREOF Grantor and Grantee have set their hands on the day and year first above written.

Grantee:

\_\_\_\_\_  
\_\_\_\_\_

Grantor:

by \_\_\_\_\_ (official capacity)

Acknowledgments.

Exhibits.

A - Map and description

B - Documentation or Specific Management and Use Agreements