

Rally 2023
Partnering with Tribes to
Protect Conservation Values
Outline

Session Description: Save the Redwoods League purchased redwood forestland with mitigation funding from PG&E, then conveyed title to the InterTribal Sinkyone Wilderness Council, a consortium of ten Tribes. The Council then conveyed a conservation easement to the League. Completing the transaction required reconciling competing legal interests, navigating differing timeframes, decision-making approaches, and elevating the importance of restoring the land to native ownership over alternate paths to preserving the land. The session will focus on: Tribal sovereign immunity and tools to consider a limited waiver in connection with a conservation easement; Tribal processes and considerations in a limited waiver; drafting an enforceable limited waiver including additional instruments to language in the conservation easement; and addressing the interests of third-party funders, whether agencies or other entities, in satisfying a mitigation requirement.

Session Objectives:

- Understanding the process of partnering with tribes and tribal organizations to draft and enforce conservation easements
- Confronting challenges during the project
- Navigating tribal sovereign immunity: how to draft conservation easement to reconcile the competing interests and values

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- Define sovereign immunity, its sources, breadth and depth and extent to which that immunity may apply to Tribal organizations, boards of directors, officers and individuals
- Explain the reasons that sovereign immunity is important to Indian Tribes
- Identify the considerations for Tribes and land trusts that may arise in Tribal waiver decisions
- Describe examples of Tribal processes for considering a waiver of sovereign immunity
- Highlight the sources of the requirement that a land trust must have the right to enforce its conservation easements
- Describe the potential conflicts between a land trust's enforcement rights and a Tribe's sovereign immunity
- Drafting approaches for immunity waivers to be legally effective
 - * Subject matter limited waivers
 - * Drafting to ensure enforceability of a waiver on subsequent Tribal landowner
 - * Additional instruments to strengthen enforceability, e.g. Power of Termination (CA Civil Code Sec. 885.010)

- Interests of third parties involved in the transaction, e.g., agency funders and 3rd party mitigation funders

* How to manage their expectations, demands, and involvement in the transaction

Additional info/comments: At a time when justice for Indian Tribes is increasing difficult to achieve in courts, land trusts have a unique role to play in working with Indian Tribes and Tribal organizations to recover ancestral lands, protect culturally-significant lands and together preserve conservation values on ecologically-significant lands. Although the focus of this presentation is on working with Tribes and tribal organizations, the concept of enforceability is relevant to all conservation easement transactions.