California Tribal Fund

Land Access Webinar
November 4, 2021 | 9:00 am PST
The Webinar Will Begin Shortly
All attendees will be muted throughout this webinar.

If you have questions, please use the Q&A button and enter your question(s) in the box.

Audio Settings: Change your audio settings to phone or computer audio. You can also click the upward arrow (^) next to change your speaker.

Chat: Send a message to the panelists or everyone (All Panelists and Attendees) in the webinar.

Q&A: Ask questions to the host and panelists or request technical help.

Live Transcript: Show subtitles for the webinar, view the full transcript or change the subtitle settings.
Our mission is to strengthen American Indian economies to support healthy Native communities. First Nations Development Institute invests in and creates innovative institutions and models that strengthen asset control and support economic development for American Indian people and their communities.
The California Tribal Fund

Mission Statement

The mission of the California Tribal Fund is to invest in the viability and visibility of California Tribal Nations, communities, and families. We are committed to eternalizing our cultures and traditions while honoring the historical fortitude of our ancestors.

For more information, please visit: www.firstnations.org/california-tribal-fund/

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Land Access Webinar

The California Tribal Fund is hosting a series of webinars to support access to ancestral lands for California tribes. This series will provide a foundation for California-based tribes and Native organizations to seek upcoming grant support through the Fund for land reparations and land returns.
Our Speakers

Saul Ettlin
Community Vision

Nicole Johnson
Native American Land Conservancy

Neil Thapar
Minnow
Recent News

In May 2019, the Maidu Summit Consortium, which represents nine groups of Maidu, was named the owner of Humbug Valley. This was the first time in California that a non-recognized tribe has had its homeland returned. This action set an important precedent.

The Wiyot Tribe and Cooperation Humboldt are working together to form a type of Community Land Trust (CLT) called Dishgam Humboldt, the first of its kind, to structurally ensure that the Wiyot tribe will maintain control of their land in perpetuity.

In September 2021, Senate Bill 231, legislation paved the way for the transfer of ownership of the property known as Blues Beach from Caltrans to a non-profit consisting of three local tribal governments, the Sherwood Valley Band of Pomo, Round Valley Indian Tribes, and Coyote Valley Band of Pomo.


Formation and Governance

An overview of forming a land trust in California
All *white men* are by nature free and independent and have inalienable rights. Among these are...acquiring, possessing, and protecting property....

California Constitution
Article 1, Section 1
A word about words...

CONSERVATION

COMMUNITY
What can a land trust do?

→ It can "own" property
→ It can hold easements*
  - Conservation easements
  - Cultural easements
→ It can be governed by multiple tribes
→ It can be a tool for unrecognized tribes to own land

*Easement: A non-possessory right to a piece of property "owned" by someone else.
Organizing your team

- Who is excited about the prospect of accessing and/or stewarding land?
- Who has experience navigating legal or bureaucratic entities?
- Where is the level of community and/or council support for the initiative?
- What are the goals for this land? Restoration of ecosystems? Housing? Economic development? Youth activities?
- Are there specific kinds of expertise needed on the team? Who are partners you develop relationships with to meet those needs?
Where, how, and for what purpose a federally recognized tribe incorporates an entity will affect the extent to which that entity can fall within the political sovereignty of the tribe.

Courts weigh the following factors to determine if an entity is an "arm of the tribe."
- (1) the entity's method of creation
- (2) whether the tribe intended the entity to share in its immunity
- (3) the entity's purpose
- (4) the tribe's control over the entity
- (5) the financial relationship between the tribe and the entity

People v. Miami Nation Enterprises 2 Cal.5th 222 (2016)
Forming the entity + Choosing a tax status

→ This is the cake...

→ In California, land trusts form as *nonprofit public benefit corporations*

→ A tribe or group of tribes may also form under tribal law

→ A federally recognized tribe may not need to form an entity in order to receive land

→ This is the frosting...

→ As nonprofits, land trusts generally rely on grant funding, and you most likely won't get grants unless you have 501(c)(3) tax exempt status*

*This is annoying and we're trying to get philanthropy to stop being so rigid. The government is less likely to budge on this.*
Where to incorporate?

#### California

**Pros**
- Developed legal systems
- Recognizable to settler entities

**Cons**
- Legal compliance
- Likely can't claim sovereignty

**Examples**
- Sogorea' Te Land Trust
- Amah Mutsun Land Trust
- Native American Land Conservancy
- Diegueño-Kumeyaay Land Conservancy

#### Tribal Jurisdiction

**Pros**
- Supports tribal sovereignty
- Minimal cost to form

**Cons**
- Agency has less capacity
- Less common, less legal clarity, settler agencies likely to be confused

**Examples**
- Northern CA Tribal Court Coalition
- California Indian Law Association

*Not land trusts!
California Nonprofit + 501(c)(3) Status

CALIFORNIA

CA Secretary of State
CA Franchise Tax Board
CA Attorney General

Land Back Now!

IRS
Forming a 501(c)(3) tax-exempt nonprofit in California

- File Articles of Incorporation with CA Secretary of State
  - Draft Bylaws
- Get an Employer Identification Number from the IRS
- Submit Form 1023 application to IRS for 501(c)(3) status
- Submit Form 3500A to CA Franchise Tax Board
- Register with the CA Attorney General Registry of Charitable Trusts
Tribally Chartered Nonprofit + 501(c)(3) Statute

- CA Secretary of State
- CA Attorney General
- CA Franchise Tax Board
- Land Back Now!
- Department of Commerce
- IRS
Forming a 501(c)(3) tax-exempt nonprofit under tribal law (ex. Hoopa Valley)

- File Articles of Incorporation with Hoopa Valley Department of Commerce
  - Draft Bylaws
- Get an Employer Identification Number from the IRS
- Submit Form 1023 application to IRS for 501(c)(3) status
- Submit Form 3500A to CA Franchise Tax Board (maybe?)

- Register as Foreign Entity with CA Secretary of State
- Register with the CA Attorney General Registry of Charitable Trusts (probably!)
Governance Basics

- Board of Directors retains ultimate responsibility for the organization
- Can be a "membership-based" organization
- Lots of ways to organize the Board, can be creative!

- The organization can have staff (employees)
- The organization can also have volunteers
- 501(c)(3) status is strict on any compensation/financial benefits for board/staff/family members
Considerations to keep in mind

→ What activities do you want to have happen on this land?
  - 501(c)(3) has limits

→ Funding
  - Will you finance this primarily with donations? Loans? Equity?

→ Property taxes
  - Nonprofits and tribes can be exempt

→ What capacity exists to manage the land trust?

→ Will the land trust fall within the sovereignty of the tribe or not?
Resources

→ Indian Land Tenure Foundation Glossary [(https://iltf.org/resources/other-resources/)]

→ CA State Agency Tribal Liaison Contact List [(updated 12/15/20)]

→ *Trust in the Land*, Dr. Beth Rose Middleton-Manning (lots of case studies)

→ Sustainable Economies Law Center - Resilient Communities Legal Cafe ([RSVP](RSVP))
  - Nov. 18 @ 12pm
  - Dec. 15 @ 12pm
Getting Ready

- Setting Vision/Goals
- Identifying Funding for Acquisition
- Understanding Holding Costs
- Developing a Management Plan
Site Control Roadmap

1. Assess Needs/Want/Goals and What you can afford
2. Tours Potential Sites
3. Submit LOI
4. Due Diligence on Building
5. Negotiate and Execute PSA
6. Submit Purchase and Sale Agreement (PSA)
7. Negotiation Price/Terms
8. Assemble Acquisition Financing
9. Close Escrow
10. Land Management
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Acquisition Due Diligence

Understand Current Ownership

• History, profile, motivation
• Title and Rights
  • Deeds: Deed Restrictions, Covenants, Easements and Encroachments.
• Water Rights and Mineral Rights
• Leases or Other Contracts Running with the Land
• Physical Inspection of Buildings (if any)

The site

• Visual inspection
• Assessors’ maps
• Assessors’ Parcel Number (APN)
• Land Use and Zoning
• Easements/Access
• Environmental assessment (Phase I, II, III)
• Utility access (electric, gas, telephone, cable, sewer, and drinking water)
Take Aways

• Set Vision and Goals of Land Control

• Develop a funding strategy

• Understand the specific site and its risks/considerations

• You don’t have to know all of it; lots of knowledgeable people can help

• Understand holding costs and how you will fund them
Case Study: Native American Land Conservancy

To Acquire, Preserve, and Protect Our Sacred Lands

Website: www.nativeamericanland.org
OUR MISSION IS TO ACQUIRE, PRESERVE AND PROTECT NATIVE AMERICAN SACRED LANDS THROUGH PROTECTIVE LAND MANAGEMENT, EDUCATIONAL PROGRAMS, AND SCIENTIFIC STUDY.
NALC Program Areas

• Land Acquisition
• Partnerships for Protective Land Management
• Cultural Enrichment Programming
  Learning Landscapes, Healing Landscapes, Salt Song Project
• Cultural and Biological Surveys
• Outreach and Coordination with Tribes
• Advocacy on Projects Impacting Cultural Sites
NALC Governance Structure

Founded by an intertribal cultural group interested in protecting off-reservation sacred sites in the Southern California desert.

Board of Directors

• At least 7, no more than 21
• Both tribal and non-tribal
• Tribal Board Members are within outside the region
• Maintain a majority of Tribal representation on the Board
• President and Vice-President always Tribal
• Operate solely by consensus though bylaws allow otherwise
• All volunteer; no Board financial commitment
Factors Effecting Corporate Structure Selection

*Why NALC chose to be a state chartered non-profit.*

• **Traditional Territories**: Some acquisition sites are in shared tribal territories and a non-profit with multi-tribal representation may help.

• **Ultimate Disposition of the Land**: Does a Tribe want to put it into trust or hold it in fee?

• **Funding & Familiarity**: Funders are more familiar with state chartered non-profits and many grants are more readily available to non-profits.

• **Public Perception**: General public isn’t generally familiar with tribes. To many donors, transfer to a Tribe seems unavailable or complex.
Factors Effecting Board Composition

Why NALC has a Native & Non-Native Board.

Aren’t they just going to put a casino on it?

• **Professional Experience**: Non-tribal Board Members may broaden the professional capabilities of the Board.

• **Relationships**: Non-tribal Board Members can bring additional and varied relationships.

• **Reach**: Tribal representation from within and outside the region can expand support the organization can offer so long as land management decisions are made by the Tribes in whose traditional territory the lands are located.

• **Mission**: Facilitating an open dialogue between Native and Non-Native people to challenge skepticism for indigenous ways of knowing.

*The appropriateness of Board member affiliation is a decision best made by the Tribes affiliated with the acquisition site.*
Mamápukaib Old Woman Mountains Preserve

- 2,416 acres
- Purchased by NALC in 1998
- Located in the Ward Valley
- 40 miles west of the Colorado River
OWMP
Coyote Hole

- App. 38 acres
- Transferred to NALC in 2018
- Located in the Mojave Desert
- Near Joshua Tree National Park
Coyote Hole

Who Passed This Way?

Archaeological resources are fragile and irreplaceable. The Archaeological Resources Protection Act of 1979 and the Federal Land Policy and Management Act of 1976 protect them for the benefit of all Americans.

Please Don't Erase The Traces of America's Past

County of San Bernardino Department of Public Works Flood Control District 909-387-8013
Other Land Acquisition Projects

• *Lake Cahuilla Fish Traps Protection (2002)*: joint protection effort with local municipalities.

• *Horse Canyon Transfer (2004)*: Partnership with a non-tribal non-profit (Anza Borrego Foundation) to transfer 1,298 acres encompassing traditional Cahuilla village sites and big horn sheep habitat.

• *Mosler Property Transfer (2009)*: Partnership with a tribal non-profit (Kumeyaay Digueño Land Conservancy) to transfer 30 acre to Kumeyaay people.
Determining the Ultimate Disposition of the Land

1. Does a Tribe want it returned to its legal ownership?
2. Does the Tribe have a specific entity it wants the land returned to?
3. Who is in the best position to be the long-term land manager?
   • Will that entity respect Tribal management priorities?
   • Are there legal restrictions or conflicts in mission that would prevent the entity from enforcing tribal management priorities?
   • Will that entity ensure Tribal citizens have appropriate access?
   • Can the entity find sufficient funding to cover management costs?
Supporting Long Term Land Management
The Multi-Multi-Million Dollar Question

• Private Endowments
• Mitigation Endowments
• State & Federal Grants for Non-profits
• State & Federal Grants for Tribes
• Tribal Charitable Giving Programs
• Grants from Foundations & Other Non-Profits
• Small Donor Programs
• Major Donor Programs
• Voluntary Land Tax

Each has its limitations...
Partnerships
Tribal Partners and Federal Agencies

The Salt Song Project, a collaborative project of the NALC and the Cultural Conservancy, revitalized the Southern Paiute Salt Songs.

The NALC has received restoration funding through California State Parks grant programs since 2007.

The NALC works with the Bureau of Land Management in the Old Woman Mountains Wilderness.

The NALC has worked on projects to manage indigenous flora and fauna in the Old Woman Mountains through the USFWS Tribal Wildlife Grant programs.
Our Strengths

• **Native Founded**: founded by tribal elders and leaders who understand the connection of Indigenous peoples to their homelands

• **Native Lead**: governed by citizens of the Indigenous communities we serve with direct participation by elders, knowledge bearers, youth, families and tribal leaders

• **Native Law and Policy Expertise**: specialized legal, political, and cultural expertise among board members that guide our internal priorities and inform our partnerships

• **Native and Non-Native Partnership Building**: excellent relationships with conservation partners

• **Native Non-Profit Mentorship**: strong history of mentoring tribes and tribal organizations

• **Native Advocacy**: advocate for the protection and preservation of sacred lands

• **Native Financial Values**: low overhead costs, a committed volunteer Board, and emphasis on ensuring elder and youth needs are met
Contact Information

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If you have questions about the California Tribal Fund or would like more information, or to schedule a call to discuss your Tribe’s or organization’s current needs, projects, etc., please contact Rebecca Tortes, Senior Program Officer, at rtortes@firstnations.org or at 951.265.7822.

For more information on our values and grantmaking, visit us at: https://www.firstnations.org/california-tribal-fund/