

## **WCB CONSERVATION EASEMENTS MINIMUM REQUIREMENTS**

### **SCOPE, PURPOSE and RECITALS OF CONSERVATION EASEMENT**

1. **PURPOSES OF CONSERVATION EASEMENT:** The conservation easement and grant agreement shall contain a definition of Purpose that is consistent with the fiscal, legislative and programmatic requirements of the funding source(s) used to pay for the conservation easement. The defined purpose of the grant and conservation easement must be consistent, and identify the resources and conservation values to be protected.
2. **PUBLIC POLICY:** The conservation easement should provide a statement(s) of state and local public policies the conservation easement supports, for example:

*Section 1362 of the California Fish and Game Code, in which the California Legislature has declared an intention to (1) support and encourage voluntary, long-term private stewardship and conservation of California's oak woodlands, and (2) provide incentives to protect and encourage farming and ranching operations that are operated in a manner that protects and promotes healthy oak woodlands and for the protection of oak trees providing superior wildlife values on private lands.*

3. **CONSERVATION VALUES:** The conservation easement shall contain a definition and description of the resources and conservation values protected by the easement. The description and definition shall be consistent with the Baseline Conditions Report. The defined conservation values must be consistent with the intent of the fund source used to pay for the conservation easement, the program goals and objectives of the program from which the project is funded. For example, the following WCB programs have defined goals, objectives and specified legislative intent: The Oak Woodland Program, the Rangeland Program, the Inland Wetland Conservation Program, the California Riparian Program, the Tax Credit Program and /or the statutes authorizing the expenditure of funds.

The definition of the conservation values shall include sufficient detail that explains habitat types, particular species or resources identified for protection, i.e., wildlife, nature of the working landscape, agricultural, historical, cultural, archaeological or recreational values.

4. STANDARD RECITALS, WITNESSETH: Describe the owner in fee simple; provide a brief and general description of property; landowner's willingness to grant a conservation easement with restrictions; statement describing landowner's willingness to use property consistent with stated purpose, and adherence to terms, covenants and conditions of conservation easement.
5. GRANTEE AUTHORITY: Statement describing the easement holders authority to hold the conservation easement as defined by Section 170(h) (3) of the Internal Revenue Code, Section 815.3 of the California Civil Code and as certified by governing body of easement holder. Statement should express responsibility to monitoring and enforce the terms and conditions of the conservation easement.
6. LANDOWNER CONVEYANCE: Statement of what the landowner desires to convey for valuable consideration to assure the protection of the defined conservation values and purpose of the conservation easement.
7. BASELINE CONDITIONS REPORT: The conservation easement shall contain reference to the Baseline Conditions Report (Report). The Report must be signed and certified by the Landowner and Grantee, as representing a current and accurate description and representation of the protected property, its resources and conservation values. The Report shall be delivered to WCB prior to the close of escrow and become part of the internal acquisition file.
8. COMPLIANCE MONITORING: The conservation easement shall contain language that requires the easement area to be monitored by the easement holder at least annually to assess the condition of the property, including without limitation the conservation values and compliance with the conservation easement and purposes of the grant. The easement must also contain language that allows WCB access to the property no less than once in any period of three calendar years, to assess compliance with the terms, covenants, and conditions of the Grant Agreement between WCB and the easement holder.
9. MONITORING PROTOCOLS: Prior to the close of escrow, the easement holder shall develop monitoring protocols. At a minimum, the protocols shall address the terms and conditions of the conservation easement, the purpose of the easement and the conservation values. The protocols shall include a definition of impairment that in-part includes a statement that if the conservation values are reduced to such level they are no longer sustainable and render the purpose of the conservation easement void. The monitoring protocols shall be reviewed and approved by WCB. **NOTE: Monitoring protocols do not have to be identified in the conservation easement; however, they must be consistent with the defined purpose of the conservation easement and the defined conservation values.**

10. MONITORING REPORT: Commencing one year after the close of escrow and every year thereafter, the easement holder shall provide a written report to WCB describing and assessing the condition of the Easement Area and condition of the conservation values. The monitoring report shall address each of the approved monitoring protocols, including an assessment of the conservation values. **NOTE: The monitoring report is not part of the conservation easement, however, the Report must capture the information outlined in the monitoring protocols and shall include sufficient detail to explain the condition of the conservation easement and the defined conservation values.**

## TERMS, CONDITIONS AND RESTRICTIONS

11. GRANTOR RIGHTS: Statements describing the rights of the landowner to engage in land use practices that are consistent with and complimentary to the purpose(s) of the easement and the conservation values. Such statements shall prohibit activities that significantly impair, interfere or otherwise burden the sustainability of the conservation values.

12. GRANTEE RIGHTS: Statements of what the Grantor (Landowner) grants and conveys to the Grantee (either NGO, State and/or third party) to accomplish the purposes of the conservation easement. Specific rights should be detailed, specific, enforceable and consistent with the purpose of the easement and applicable provisions of the WCB grant agreement.

13. PERMITTED USES: Statements of allowable or permitted uses of the property that are consistent with and complimentary to the defined purpose of the easement and the defined conservation values.

14. PROHIBITED USES: Statement of prohibited uses that would result in damage to or loss of value to the conservation values and purpose of the conservation easement. Statements shall include a general provision that specifies that prohibited uses are not an inclusive and exhaustive list and any activity or use that deters from or impairs the conservation values of easement is prohibited.

15. PRIOR APPROVED ACTIVITIES: Some land uses may or may not impair the conservation values. Prior approval from the easement holder must be obtained on questionable or unstated land uses. The easement should describe the process for obtaining prior approval from the easement holder and/or state.

16. APPLICABLE LAWS: The conservation easement shall contain a statement the landowner is responsible for complying with applicable laws.

17. PUBLIC ACCESS: If public access is allowed, the conservation easement should contain language stating that public access rights are created with the easement and specifically define those rights. If public access is not allowed, the easement should contain language stating that public access has not been created.
18. INDEMNIFICATION AND HOLD HARMLESS: The conservation easement shall contain language of indemnification and hold harmless on the part of the landowner.
19. OPERATION AND MAINTENANCE: The conservation easement shall contain language identifying the landowner as the responsible entity for all maintenance and operations of the property including the payment of applicable state, local and federal taxes.
20. TRANSFER OF EASEMENT RIGHTS: The conservation easement shall contain language prohibiting the sale, transfer, or exchange of easement interest (or portions thereof) without the prior approval of the WCB or its successor.
21. SUBORDINATE LIENS ON PROPERTY: Easement shall contain language that all liens must be subordinate to State.
22. SECURITY FOR DEBT: The conservation easement shall contain language stating the easement may not be used as security for any debt without the written approval of the State of California, acting through the WCB or its successor.
23. NOTICES: The conservation easement shall contain all applicable information for notifying the easement holder and the State. Notices must be in writing.
24. BREACH OF ESSENTIAL CONDITIONS: The conservation easement shall contain a description of the notification process in the event any terms, conditions, or covenants of easement are violated. The language shall describe conditions that constitute a default, i.e., cure within 90 days, if possible.
25. REMEDIES: The conservation easement shall describe in the event of a default, all remedies available to cure default. One such remedy must include the option that WCB may require the easement holder to convey its interests in the conservation easement to WCB or, at the election of WCB, to another entity or organization authorized by California law to acquire and hold conservation easements and which is willing and financially able to assume all of the obligations and responsibilities of the former easement holder.
26. TERMINATION OF EASEMENT HOLDER: If the easement holder is a nonprofit organization and the existence of the easement holder is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the State of California. However, prior to that termination, upon approval of WCB, another public agency or nonprofit organization may receive title to all or a portion of that interest in real property by recording its

acceptance of title in writing. Any deed or other instrument of conveyance whereby the real property is being acquired by a nonprofit organization shall be recorded and shall set forth the executory interest or right of entry on the part of the State of California.

27. COST OF ENFORCEMENT: The conservation easement shall contain a statement that any costs incurred by either party for purposes of correcting a default on the part of the landowner or the easement holder shall be borne by the losing party.
28. EXTINGUISHMENT: The conservation easement shall contain language stating the easement shall not be terminated or extinguished, in whole or in part, except through appropriate legal proceedings in a court of competent jurisdiction.
29. TERMINATION AND EXTINGUISHMENT: The conservation easement shall contain language that specifies how the distribution of funds will be made if any part of the property is taken by the exercise of eminent domain, or acquired by purchase in lieu of condemnation, to terminate the conservation easement in whole or in part. The language shall further specify that WCB and the easement holder may act jointly to recover from the condemning authority the full value of the easement holder's interest in the property. WCB shall be entitled to the share of the award, which equals the ratio of the WCB Grant Funds to the purchase price the easement holder paid to acquire the conservation easement.
30. SIGNAGE: The conservation easement must contain language that recognizes WCB participation in funding the easement and permits the posting of one or more sign(s) on the Property displaying the WCB logo.
31. AMENDING CONSERVATION EASEMENT: The conservation easement must contain language that specifies any amendment is subject to the approval of the WCB, and that any amendment made without this approval is void. If the easement is modified (and approved by WCB), the easement shall be re-recorded with the County and a copy of the modified recorded easement provided to the State.
32. SALE OF CARBON CREDITS: Grantee shall ensure that the terms and conditions of the Conservation Easement are taken into account when calculating the baseline/business as usual of the Property for purposes of establishing carbon credits or other emissions offsets that the Grantee proposes to authorize, create, sell, exchange or transfer with respect to the Property. Grantee further agrees to notify Grantor at least 45 days prior to any such proposed establishment.

Further, the Conservation Easement shall require the Landowner to ensure that the terms and conditions of the Conservation Easement are taken into account when calculating the baseline/business as usual of the Property for purposes of establishing carbon credits or other emissions offsets that the Landowner

proposes to authorize, create, sell, exchange or transfer, and to notify the Grantee at least 45 days prior to any such proposed establishment. Upon receipt of any such notice Grantee shall promptly furnish a copy of the same to Grantor.

Consistent with the provisions of Section 5.4, GRANTEE'S COVENANTS, Grantee agrees to include in the required annual monitoring report, a summary of any activity by the Landowner or Grantee to establish carbon credits or other emissions offsets with respect to the Property, and to provide Grantor with such further information as Grantor may request regarding such activity.

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33. EXHIBITS: If the conservation easement allows specific activities to occur over the easement area, i.e., intensified agricultural uses, buildings, gravel quarries, etc., these land uses should be described and their general location identified on a map that is included as an Exhibit to the conservation easement. For example:

- Residential Envelope
- Agricultural Building Envelope
- Location of Existing Buildings
- Intensified Agricultural Envelope
- Gravel Quarries