

## PUBLIC COMMENT DRAFT

### Sustainable Agricultural Lands Conservation Program Minimum Requirements

#### **Purpose**

These requirements apply to any agricultural conservation easement ("Easement") funded in whole or in part by the Department of Conservation ("Department"), on behalf of the Strategic Growth Council ("Council"), through the Sustainable Agricultural Lands Conservation Program ("Program"). This document does not prevent the Council from establishing additional requirements if necessary and within reason.

#### **General Requirements**

- For any Easement funded in whole or in part by the Council through the Program, the grantee must either:
  - A. Attach the Department's minimum deed terms as an exhibit to the Easement; or
  - B. Integrate the Department's minimum deed terms into the body of the Easement.

Other than filling in the specific details, modifications to the minimum deed terms are not permitted.

In addition to any other requirements specified in the Condition of Funding, the Award Letter, or grant agreement, the Department will not release funds for the purchase of the Easement until it has verified that the Easement includes these minimum deed terms and the required exhibits.

- At a minimum, each Easement must include the following exhibits:
  - A. The Department's minimum deed terms, if not integrated into the Easement body;
  - B. A general map showing the location of the property with reference to any neighboring towns, cities, or other developed areas;
  - C. The legal description of the Easement area;
  - D. A diagram of the Property showing the location of the boundary; adjacent public roads; protected area(s) within the boundary, if any; all building envelopes; and farm infrastructure, such as fences, farm or ranch roads, and wells; and,
  - E. Any prior encumbrances to which the Easement is subject.

The Easement may include additional exhibits.

- The following language must be included in the Easement deed:

This Agricultural Conservation Easement ("Easement") is acquired with funds provided, in part, under the Sustainable Agricultural Lands Conservation Program.. Exhibit \_\_\_\_ ("Minimum Deed Terms to Protect Agricultural Use") is attached and incorporated by reference. As required by [either funding guidelines or statute], and as a condition of receiving funds, all present and future uses of the

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real property burdened by this Easement shown for reference purposes only on Exhibit \_\_\_ (location map) and identified in Exhibit \_\_\_ (legal description) are and will remain subject to the terms and conditions described herein in perpetuity.

The term "Easement" includes all attachments and exhibits referenced within or affixed to or otherwise made a part of this document.

If a conflict exists between the terms in Exhibit [Minimum Deed Terms to Protect Agricultural Use exhibit] and any other section of this Easement, the language in Exhibit [Minimum Deed Terms to Protect Agricultural Use exhibit] will prevail.

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EXHIBIT \_\_\_\_\_

Sustainable Agricultural Lands Conservation Program  
Minimum Deed Terms to Protect Agricultural Use

**1 Funding.**

On behalf of the Strategic Growth Council ("Council"), the Department of Conservation ("Department") facilitated and provided funding through the Sustainable Agricultural Lands Conservation Program ("Program") for the purchase of this Easement on real property shown for reference purposes only on Exhibit \_\_\_\_ (location map) and identified in Exhibit \_\_\_\_ (legal description), hereafter referred to as "the Protected Property."

**2 Acknowledgement.**

The [LANDOWNER NAMES] (collectively "Grantor") and the [Grantee's Name(s)] ("Grantee") acknowledge that the State of California, at a public meeting on [date of approval meeting] selected the property for funding through a competitive grant process and contributed funding for the acquisition of this Easement based on characteristics of the property important to the Program and identified at the time of the application. These characteristics ("Priority Characteristics") include: *[list property characteristics that were important in project review and were included as part of approval]*.

Grantor and Grantee acknowledge that this Easement is a perpetual conservation easement as defined by Section 815.1 of the Conservation Easement Act of 1979 (California Civil Code Section 815 et seq.) of the nature and character described in this Easement and the statutory and regulatory requirements of that Act.

**3 Grantee Authority.**

Grantee is a nonprofit organization within the meaning of California Civil Code Section 815.3(a).

--or --

Grantee is a governmental entity within the meaning of California Civil Code Section 815.3(b) and has the authority to hold easements.

--or --

Grantee is a [federally recognized California Native American tribe] [a non-federally recognized California Native American tribe that is on the contact list maintained by the Native American Heritage Commission to protect a California Native American prehistoric, archaeological, cultural, spiritual, or ceremonial place], within the meaning of California Civil Code Section 815.3(c).

**4 Conservation Purpose.**

The primary conservation purpose of the Easement is to protect the property for agricultural use and ensure that the Protected Property remains available for agricultural use in perpetuity ("Conservation Purpose"). This Easement also protects the Priority Characteristics specified in Section 2, above, which are compatible and consistent with the agricultural use of the Protected Property and within the Conservation Purpose of this Easement.

Nothing in this Easement relieves Grantor of any obligation or restriction on the use of the Protected Property imposed by law.

## 5 Easement Restrictions.

### 5.1 Apply to Entire Protected Property.

For purposes of this Easement, the Protected Property is considered one parcel, regardless of whether the Protected Property consists of more than one parcel, and the restrictions and covenants of this Easement apply to the Protected Property as a whole.

### 5.2 Run with the Land in Perpetuity and Are Binding on Successors.

Pursuant to California Civil Code Section 815.2, this Easement shall run with the land in perpetuity.

The terms and conditions of this Easement are binding upon Grantor, Grantee, and their respective heirs, successors, agents, assigns, lessees, and any other person claiming under them (collectively, "Successors"). Grantor, Grantee, and their respective Successors must comply with all terms and conditions of this Easement.

### 5.3 General Restrictions and Prohibitions.

Neither Grantor nor Grantee shall conduct, authorize, or allow any action, activity, or use that is inconsistent with the Easement.

An action, activity, or use that is inconsistent with the Easement is one that: (1) may significantly impair the Protected Property's Conservation Purpose, its long-term agricultural productivity or agricultural viability or (2) restricts husbandry practices as that term is defined in California Public Resources Code Section 10218.

### 5.4 Uses and Activities.

#### 5.4.1 Permissible Uses and Activities

The following uses and activities are consistent with the Conservation Purpose specified in Section 4 of this Exhibit, and are therefore permissible on the Protected Property:

- A. The production, processing, and marketing of agricultural crops, agricultural products, and livestock.
- B. The restoration, enhancement, maintenance, protection, and conservation of natural resources, provided such activities are carried out, to the greatest extent practicable, in accordance with generally accepted best management practices associated with the biota, hydrological characteristics, soils, and terrain found on the Protected Property, provided that the Conservation Purpose is not thereby significantly impaired.
- C. The activities to reduce the Protected Property's greenhouse gas emissions, and to improve, promote, or enhance the Protected Property's adaptation and resiliency to climate change, provided that the Conservation Purpose is not thereby significantly impaired.
- D. The activities to support water conservation and protection, improved air quality, and fuels reduction and management, including to protect the Protected Property and neighboring properties from catastrophic wildfire, provided that the Conservation Purpose is not thereby significantly impaired.
- E. *[for projects funded where guidelines have a maximum square footage]* The maintenance, repair, or replacement of *[insert number of existing single-family residences]* single family residences existing as of the Effective Date of this Easement; and construction, maintenance, repair, or replacement of *[insert*

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number of reserved single-family residences] additional single-family residences, provided that each single-family residence is limited to a maximum living area of [XXXX square feet from Guidelines]. Single-family residences that exceeded that amount at the time the easement application was approved shall not be enlarged further.

--or --

*[for projects funded where guidelines do not have a maximum square footage]* The maintenance, repair, or replacement of [insert number of existing single-family residences] single-family residences existing as of the Effective Date of this Easement; and construction, maintenance, repair, or replacement of [insert number of reserved single family residences] additional single-family residences, provided that each single-family residence is limited to a maximum living area that is consistent with grantee's policies, local building codes, and the surrounding neighborhood and provided that the Conservation Purpose is not thereby significantly impaired.

- F. The construction, reconstruction, and use of secondary dwelling units and farm worker housing, subject to reasonable limitations on size and location, provided that the Conservation Purpose is not thereby significantly impaired. In no case may the limitations on secondary dwelling units and farm worker housing be more restrictive than California Government Code Section 65852.2 or California Health and Safety Code Section 17021.6, respectively, or local building permit requirements
- G. The construction, reconstruction or use of renewable energy facilities to generate energy for the agricultural and residential needs of the Protected Property, provided that the Conservation Purpose is not thereby significantly impaired. Sale of excess power is permitted.
- H. The granting of leases, assignments, or other conveyances, or the issuing of permits, licenses, or other authorization, for the exploration, development, storage, or removal of oil and gas by the owner of the subject land, or for the development of related facilities or for the conduct of incidental activities, provided that the Conservation Purpose is not thereby significantly impaired.
- I. The granting of rights-of-way by the owner of the subject land in and through the land for the installation, transportation, or use of water, sewage, electric, telephone, gas, oil, or oil products lines, stock water development and storage, energy generation, and fencing, provided that the Conservation Purpose is not significantly impaired by those activities.
- J. The construction and use of structures on the subject land that are necessary for agricultural production and marketing, including, but not limited to, barns, shops, packing sheds, cooling facilities, greenhouses, roadside marketing stands, stock water development and storage, energy generation, and fencing, provided that the Conservation Purpose is not significantly impaired by those activities.
- K. Customary part time or off season rural enterprises or activities, including, but not limited to, hunting and fishing, agritourism, wildlife habitat improvement, predator control, timber harvesting, and firewood production, provided that the Conservation Purpose is not significantly impaired by those activities.

5.4.2 Location of Structures and Improvements.

- A. Except as specified in Section 5.4.2(B), below, all structures and improvements must be located within the Building Envelope(s), not to exceed \_\_\_\_ acres and shown for reference purposes only in Exhibit \_\_\_\_ (Building Envelopes and Existing Improvements).
- B. Incidental agricultural structures, and utilities to serve approved buildings or structures, including on-farm energy structures allowed in Section 6.4.1 (G), above, may be built outside of the Building Envelope(s), provided that the Conservation Purpose is not thereby significantly impaired.

5.5 Any subsequent easement or deed restriction placed on the easement property will be subordinate to the agricultural conservation easement and require Council approval in advance.

**6 Council's Right of Enforcement.**

- 6.1 If the Council determines that the Grantee fails to enforce this Easement, the Council may require Grantee to assign its interest under this Easement to another qualified entity, subject to the requirements of Section 9, below.
- 6.2 Without limiting Grantor's liability or Grantee's remedies, any financial recovery received by Grantee related to damages at the Protected Property shall be applied to the cost of undertaking corrective action to enhance or restore the Protected Property for which damages were received. Should the restoration of the Protected Property be impossible or impractical for any reason, Grantee shall return to the Council its Proportionate Share of all damages recovered, as calculated in Section 12, below.

**7 Annual monitoring.**

- 7.1 Grantee shall monitor the Protected Property for compliance with the easement on an annual basis. By June 30 of each year, Grantee shall submit a monitoring report to the Department that must, at a minimum, summarize the results of the site visit performed within the past 12 months, including the method(s) of monitoring conducted, the condition of the Protected Property, the occurrence of any violations, all corrective action taken, resolution or outcome of all violations discovered, and any transfer of interest in the Protected Property.
- 7.2 Failure to annually monitor the Protected Property or submit an annual monitoring report shall not impair the validity of this Easement or limit its enforceability in any way.
- 7.3 With reasonable notice and no frequently than annually, Council or its designee may enter the property to verify compliance with the terms of the Easement. Grantor agrees to provide such access as is reasonable to verify compliance. As appropriate, Council will coordinate any site visits with any other funders or Grantee.

**8 Amendment.**

- 8.1 This Easement and any of its terms may only be amended if, in the sole and exclusive judgment of Council, such amendment is not inconsistent with the Conservation Purpose specified in Section 4 of this Exhibit. Grantee must provide the Council with timely written notice of any proposed amendments. Prior to the signing and recordation of the amended Easement, such amendments must be mutually agreed upon in writing by Grantee, Grantor, and any entity that contributed funding, including

the Council.

8.2 All amendments must be recorded in the county recorder's office in each county in which the Protected Property is located.

8.3 A copy of the recorded amendment shall be provided to Council within a reasonable amount of time after the recordation.

8.4 Any purported amendment that is recorded without the prior written consent of Council is null and void.

**9 Transfer of Easement.**

9.1 This Easement may only be assigned or transferred to an entity authorized to hold such Easement as specified in California Civil Code Section 815.3. Such an assignment or transfer may proceed only if the entity expressly agrees to assume the responsibility imposed on Grantee by the terms of this Easement and is expressly willing and able to hold this Easement for the Conservation Purpose for which it was created.

9.2 If Grantee should desire to assign or transfer this Easement, Grantee must obtain written consent from Council, which shall not be unreasonably withheld. All assignment and assumption agreements transferring the Easement shall be recorded in [County name] County.

9.3 If Grantee ceases to exist prior to the assignment or transfer of this Easement to a qualified entity, or if Grantee no longer meets the requirements of California Civil Code Section 815.3, Council, in consultation with Grantor and any other funders, shall identify and select an appropriate private or public entity to whom this Easement shall be transferred.

**10 No Merger of Title.**

It is the express intent of the parties that this Easement is not extinguished if Easement and the fee title of the Protected Property are held by the same entity.

**11 Condemnation.**

11.1 This easement is a "property appropriated to public use" because the Council is a public entity that provided funds to acquire it. Therefore, whenever any entity exercises the power of eminent domain, including in lieu of eminent domain acquisitions, to acquire all or a portion of the Protected Property subject to the Easement, the condemnor must comply with California Code of Civil Procedure Section 1240.055.

11.2 This Easement shall not be extinguished until Council receives its Proportionate Share of the Easement Value.

**12 Allocation Ratio.**

12.1 The fair market value of the Easement is \_\_\_\_\_ percent, hereinafter the "Easement Value," of the fair market value of the land unencumbered by this Easement. The Easement Value will remain constant over time.

12.2 The allocation of the Easement Value between Grantee and Council [and additional funders] will be as follows: (a) to Grantee \_\_\_\_\_ percent of the Easement Value; and (b) to Council \_\_\_\_\_ percent of the Easement Value [and to the additional funder, \_\_\_\_\_ percent of the Easement Value]. Council's portion of the Easement Value shall be referred to as its "Proportionate Share."

**13 Warranty of Title.**

13.1 Grantor represents that it owns the entire fee simple interest in the Protected Property,

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including the entire mineral estate, subject to the existing encumbrances, easements, or title claims that this Easement is expressly subject to are shown in Exhibit \_\_\_\_ (Prior Encumbrances) and will defend this Easement against all claims that may be made against it.

13.2 Based on the Allocation Ratio in Section 12, above, Council is entitled to its Proportionate Share from any claim paid by a title insurance company.

**14 Indemnity.**

Because Council does not control actions by either Grantor or Grantee, Grantor and Grantee shall indemnify and hold harmless the Council, its employees, agents, and assigns for any and all liabilities, claims, demands, losses, expenses, damages, fines, fees, penalties, suits, proceedings, actions and costs of actions, sanctions asserted by or on behalf of any person or governmental authority, and other liabilities (whether legal or equitable in nature and including, without limitation, court costs, and reasonable attorneys' fees and attorneys' fees on appeal) that the Council may be subject or incur relating to the Protected Property, which may arise from, but are not limited to, Grantor or Grantee's negligent acts, omissions, or breach of any representation, warranty, covenant, or agreement contained in this Easement or violations of any federal, state, or local laws.

**15 Interpretation and Severability.**

15.1 This Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions to give maximum effect to its Conservation Purpose.

15.2 No provision of this Easement shall constitute governmental approval of any improvements, construction, or other activities that may be permitted under this Easement.

15.3 If any term, provision, covenant, condition, or restriction of this Easement is held by a court of competent jurisdiction to be unlawful, invalid, void, unenforceable, or not effective, the remainder of this Easement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.