



PAJARO RIVER WATERSHED
FLOOD PREVENTION AUTHORITY
Phase 4b: Implementation Plan for Soap Lake Floodplain
Preservation Project and Watershed Flood Protection Actions



Technical Memorandum No. 4.2.3

Task: **Conservation Easement Provisions**
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Appendix A: Example Conservation Easement

Funding for this project has been provided in full or in part through a contract with the SWRCB pursuant to the Costa-Machado Water Act of 2000 (Proposition 13) and any amendments thereto for the implementation of California's Nonpoint Source Pollution Control and Watershed Program. The contents of this document do not necessarily reflect views and policies of the SWRCB, nor does mention of trade names or commercial products constitute endorsement or recommendation for use.

Introduction

This technical memorandum (TM) presents the work completed as part of Task 4.2.3: Conservation Easement Provisions for the Soap Lake Floodplain Preservation Project as part of the Pajaro River Watershed Study. RMC was tasked with establishing a standard set of conservation easement provisions as a guide for future acquisitions. This TM develops an approach to establishing provisions, recommends a collection of standard provisions, and discusses optional provisions for special cases.

Background

The Pajaro River Watershed Study is a multiphase project addressing flooding in the Pajaro River Watershed. The objectives of the study are to “identify, evaluate, fund, and implement flood prevention and control strategies”¹ in the watershed. Table 1 summarizes the work completed during the first three phases of the study and the work being conducted in Phase 4.

Table 1: Pajaro River Watershed Study Summary Table

Phase 1 Stream Flow Modeling

Modeled the hydrologic and sediment regimes of the watershed. Provided a better understanding of the affects that land use changes over time have on flooding frequency and magnitude.

Phase 2 Development of Flood Protection Alternatives

Identified project alternatives that would provide flood protection for the Pajaro River from the 100-year flood flows identified in Phase 1.

Phase 3 Selection of Projects and CEQA Analysis

Soap Lake Floodplain Preservation Project was identified as critical to success of the Corps of Engineers downstream flood protection projects. Prepared the CEQA document and other supporting studies.

Phase 4 Implementation Plan for Soap Lake Floodplain Preservation Project

Develop an implementation plan to preserve Soap Lake’s natural ability to maintain flows in the lower reaches of the Pajaro River.

Soap Lake, not a typical lake but actually a floodplain, acts as a natural detention basin in the upper Pajaro River during flooding conditions. The Soap Lake Floodplain Preservation Project seeks to preserve the approximately 9,000 acre floodplain by maintaining the current agricultural practices of the region and limiting development in the floodplain. It is the land’s physical characteristics, principally surface roughness, that dictate the flooding regime and resulting downstream flows. By acquiring development rights to the land, it is possible to maintain Soap Lake’s natural flood attenuation capacity. Figure 1 shows the location of the Soap Lake Floodplain.

¹ California State Assembly Bill 807, July 2000

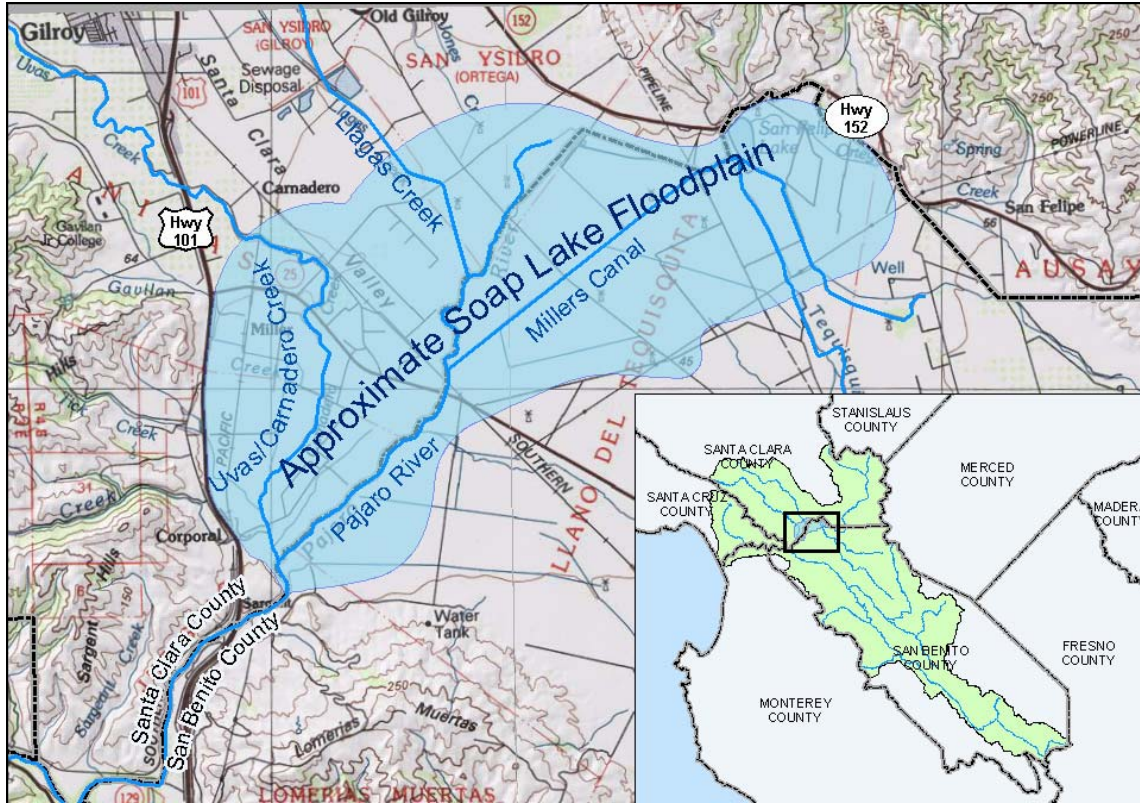


Figure 1: Soap Lake and Surrounding Area

The following section presents conservation easements as a method to preserve the current land uses at Soap Lake.

Conservation Easements

An easement is a legal agreement between a land owner and a purchasing authority that restricts certain uses on the property, without changing ownership of the land. A *conservation easement* restricts activity on the parcel to protect natural resources associated with the land. A conservation easement typically allows current uses such as farming to continue, but prevents the property from being developed for residential, commercial, and industrial uses. The easement holder is commonly either a government entity or a private, non-profit conservation organization such as a land trust.

Conservation values that may be protected include natural resources that have agricultural, scenic, open space, historical, scientific, biological, or ecological significance. Besides preserving essential environmental values of the land, conservation easements provide direct benefits to the land owner as well as easement holder. A sampling of these benefits is listed in Table 2.

Table 2: Stakeholder Easement Benefits

Stakeholder	Benefits
Landowner	Easement sale provides landowner income while retaining ownership
	Federal income tax benefits if landowner donates land
	Lower property taxes due to reduction in property value
	Estate tax benefits due to lower property value
	Assured conservation even if property is sold or zoning ordinances change
	Very flexible tools that can be tailored to landowner's needs
Easement Holder	Preserves environmental qualities and scenic beauty of region
	Less expensive than fee simple land acquisition
	Establishes permanent development restrictions
	Property still on tax rolls (for governmental agencies)

Conservation easements will play an integral role in the Soap Lake Floodplain Preservation Project. Easements ensure that the land will not be developed, preserving the natural flood attenuation effects of the land. Development of any kind decreases the surface roughness and permeability of the land, increasing the rate and volume of surface runoff and decreasing the floodplain's natural attenuation capacity. Figure 2 presents the Soap Lake floodplain, depicting the area within the 100-year floodplain.

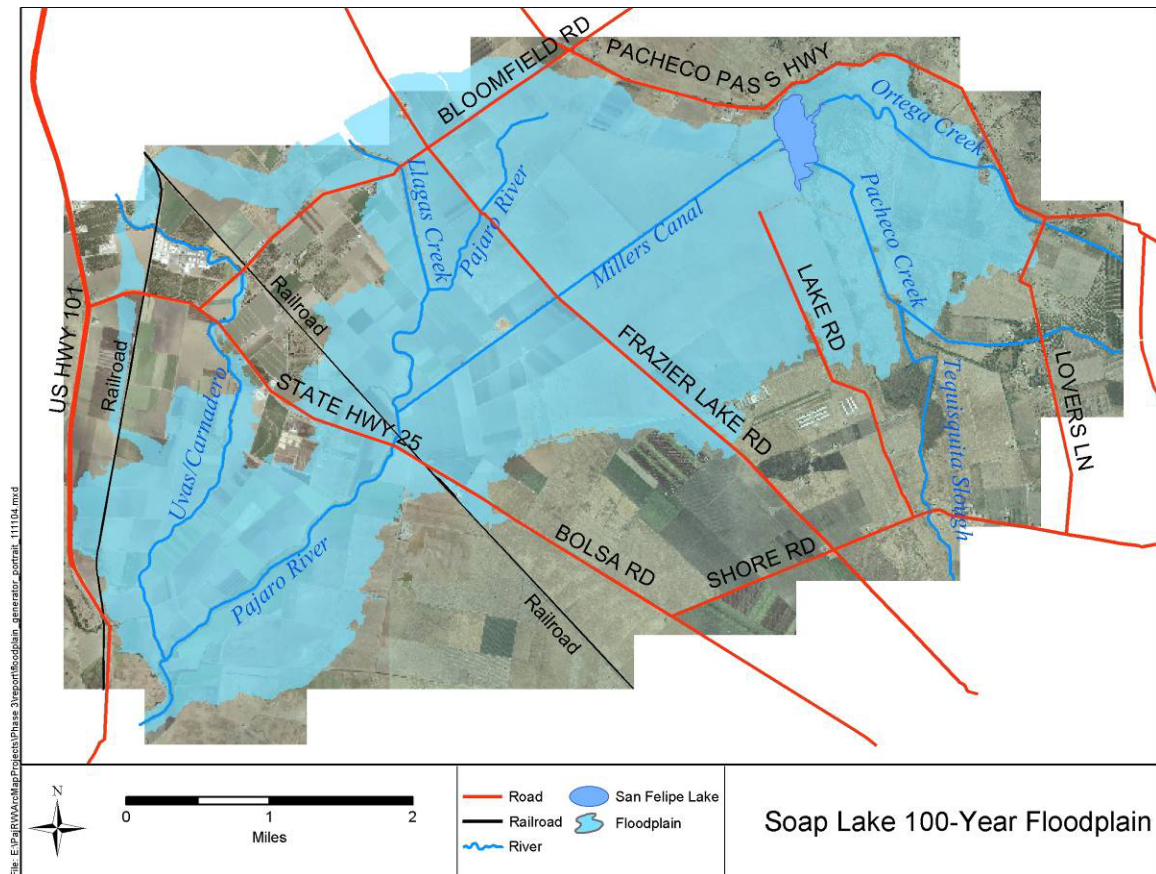


Figure 2: Soap Lake and Surrounding Area

Properties within this floodplain have been identified for fee acquisition or conservation easements from willing landowners. Refer to TM 4.2.1 Land Acquisition for further information regarding the prioritization of property acquisition. The following section presents an approach to establishing easement provisions.

Approach to Establishing Provisions

Standard Provisions for Soap Lake Easements

The Authority's primary objective in obtaining conservation easements in the Soap Lake floodplain is to preserve the flood protection benefits that the agricultural land provides. The best method to achieve this goal is to maintain the existing agricultural uses.

Effective conservation easements will allow landowners the continued use of their land for farming without reducing the flood attenuation capacity of the land. Provisions should not be so restrictive as to discourage the usage of easements. However, provisions must explicitly state and enforce the prohibition of reduction in flood attenuation capacity. To achieve this balance, a clear understanding of the landowner's needs and willingness to give up greater rights is required. A good working relationship is necessary between the landowner and easement holder.

Potential Provisions for Soap Lake Easements

Numerous secondary provisions designed to protect special habitats, scenic viewsheds, and other conservation resources may be added to the basic floodplain protection easements if the landowner is willing. These secondary restrictions may also be layered on to the land at a later date when the current or future landowner is more amenable to additional provisions. Table 3 lists some additional benefits of these potential provisions.

Table 3: Additional Easement Benefits

Benefit	Description
Improved surface water quality	Sediment falls out of suspension when water velocity decreases through floodplain
Preservation of open space land	Preserves natural habitat
Protection/enhancement of wildlife habitat	Establish wildlife corridors, preserve biologically significant natural habitat
Enhancement of existing riparian corridors	Wetland Restoration
Recreational opportunities	Wildlife viewing, public trails, educational visits

Easement Process

As mentioned earlier, an easement can either be donated to or acquired by a conservation organization or agency. Once the landowner and easement holder come to an agreement in principle regarding the sale or donation of an easement, certain steps must be taken to complete the legal transaction. The easement process is similar to most real estate transactions and typically entails a recorded purchase and sale agreement between the

two parties. Table 4 presents a checklist of typical steps in the acquisition process. An outline of a typical easement document follows.

Table 4: Steps in the Easement Process

Activity	Description
✓ Qualified Appraisal	To determine value of easement. Needed for tax purposes and to determine cost of easement, if sold. Refer to TM 4.2.1: Land Valuation.
✓ Secure Funding for Easement Purchases	Apply for funding grants from government and private sources. California Farmland Conservation Program applications require a County endorsement of the easement project, as well as notification to surrounding landowners.
✓ Purchase and Sale Agreement	Provides terms and responsibilities of both parties during potentially long purchase process; may contain penalties for withdrawal from contract.
✓ Baseline Documentation	Records existing "Conservation Values" of the property, as well as current uses and location of future allowed uses. Additional details of the Baseline Documentation are discussed below.
✓ Title Search	Determines if liens, encumbrances, or other issues exist with property's title.
✓ Mortgage Subordination	If property is subject to mortgage and owner cannot immediately satisfy mortgage, easement holder and lender must record agreement that subordinates the rights in the property to rights of easement holder
✓ Environmental Assessment	Laws unclear regarding easement holder's liability for environmental cleanup. Assessment establishes previous contamination on property.
✓ Geology Report	May be necessary if third party owns mineral rights.
✓ Survey	To define boundaries of property if in dispute, or if the easement will cover only a portion of the property. Also may be used to determine boundary of building envelopes.
✓ Stewardship Fund	Fund helps support future monitoring and enforcement obligations of the easement holder.
✓ Real Estate Closing	Document recorded at office of local recorder of deeds. Only necessary if easement is sold.
✓ Publicity	Public recognition of landowner's generosity, opportunity to educate community on benefits.

Outline of Typical Easement Document

A typical conservation easement contains the following components.

- Identification of parties involved
- Statement of purpose
- Easement objectives
- Baseline documentation reference
- Provisions:
 - Restrictions

- Rights of grantee & grantor
- General & special provisions
- Signatures & acknowledgments
- Legal description of the property

A sample easement from the California Department of Conservation can be found in Appendix A.

Baseline Documentation

A report regarding the environmental condition of the property should be compiled at the time the easement is placed and referenced in the easement document. This baseline documentation is necessary for three reasons: 1) it is an IRS requirement for landowners who intend to take a charitable tax deduction; 2) it is a way for easement holders to conduct meaningful inspections in the future; and 3) in the case of an enforcement action or dispute, it allows the landowner, easement holder, and potentially a court of law to determine the original condition of the land at the time the easement was transacted. The report identifies “conservation values” of the property and any threats to the property’s natural resources. Conservation values include natural resources that have agricultural, scenic, open space, historical, scientific, biological, or ecological significance. The baseline documentation typically includes:

- Current uses, as well as the location of future allowed uses
- A list of the property’s natural flora, fauna, hydrology, geology, soils and other natural characteristics
- Photographs of property, including aerial photographs
- Topographic and soil maps

Additionally, the document may contain a conservation plan with building envelopes² mapped out and a management plan for the natural resources.

Recommended Standard Provisions for Soap Lake Easements

This section recommends standard provisions and specific provision language for Soap Lake easements. These provisions represent the minimum restrictions necessary to achieve the primary objective of the project, which is to preserve the flood attenuation capacity of the Soap Lake floodplain. The provisions should serve as a guide upon which additional provisions can be added, dependent on landowner and easement holder discussions. Provisions that do not relate directly to the flood protection objective are not included here. All provisions are subject to legal review by the adopting agencies.

It is important to state in the preamble or purpose section of the easement that flood protection is the main purpose of the easement. Suggested language is as follows:

² A building envelope is a section of land reserved for permitted construction activities, such as building a one family residence. Building envelopes and permitted construction activities must be defined during the easement process and delineated on property maps.

“Grantor grants this Easement (for valuable consideration) to Grantee for the purpose of assuring that under Grantee’s perpetual stewardship, the flood attenuation capacity (and other values) of the Property will be conserved and maintained forever, and the uses of the land that are inconsistent with these conservation purposes will be prevented or corrected.”

Table 5 presents the recommended standard provisions, specific easement language, and notes on each provision. Further discussion of the agricultural structures provision follows.

Table 5: Recommended Provisions for Soap Lake Easements

Recommended Provision	Specific Easement Language³	Notes
Preservation of Agricultural Use of Land	Grantor retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law as long as the agricultural productive capacity and open space character of the Property are not thereby significantly impaired.	Continued agricultural usage, with certain limitations, is the best insurance for continued flood protection over time. Maintains economic value of land and still pays taxes.
Maintain Floodplain Function (Purpose)	The purpose of this Easement is to enable the Property to retain its current flood attenuation capacity by preventing uses of the Property that will impair or interfere with the Property flood attenuation capacity.	In addition to this purpose, see specific restrictions regarding new structures, road building and other activities below.
Construction of Agricultural Structures and Improvements within a Building Envelope	Existing agricultural structures and structural improvements may be repaired, reasonably enlarged, and replaced at their current locations within the Building Envelopes for agricultural purposes. New buildings and other structures and improvements to be used solely for agricultural production on the Property, including barns, equipment sheds, and improvements to be used for agricultural production purposes or sale of farm products predominantly grown or raised by Grantor on the Property, but not including any dwelling or agricultural employee housing, may be built on the Property within the Building Envelopes.	To minimize the amount of impervious surfaces over time, all new buildings, including greenhouses, should be restricted to a defined Building Envelope or Farmstead Area delineated in the easement document (also in Baseline Document). Must also be in accordance with applicable zoning ordinances.

³ Easement language provided by Tom Scharffenberger, Scharffenberger Land Planning and Design

Recommended Provision	Specific Easement Language ³	Notes
Single Family Residence	One (existing or new) single-family dwelling and ancillary uses, including, but not limited to, swimming pool, tennis court, gazebo and garage, may be built entirely within the Building Envelope.	New residences are restricted to the Building Envelope. Specific restrictions may be placed on the size of the residence. It is important to retain the right to a single family residence to preserve agricultural use over time.
Agricultural Employee Housing	Any agricultural employee housing must be located entirely within the Building Envelope.	A specific size limitation may be placed on the structure.
Baseline Documentation	Record establishing "Conservation Values" specific to property	
Utility Services and Septic Systems	Existing wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communication, or other utility services solely for serving the improvements permitted herein may be installed, maintained, repaired, removed, or relocated and replaced without further permission of Grantee.	To ensure floodplain retention capacity, the easement might limit new utility structures to be placed underground.
Recreational Improvements	Private recreational improvements (e.g. swimming pool, tennis court) for the personal, non-commercial use of Grantor and Grantor's family and guests are permitted only in the Building Envelopes.	To ensure floodplain retention capacity, no commercial recreational improvements are allowed, and no improvements may be constructed outside of the building envelope.
Subdivision	The division, subdivision, defacto subdivision or partition of the Property, including transfer of development rights, whether by physical, legal, or any other process is prohibited. Grantor agrees the Property comprises one (1) existing legal parcel, and that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance pursuant to California Government Code section 66499.35 based on previous patent or deed conveyances, subdivisions, or surveys. Grantor will not apply for or otherwise seek recognition of additional legal parcels within the Property based on certificates of compliance or any other authority. Grantor shall continue to maintain the parcel comprising the Property, and all interests therein, under common ownership as a single parcel.	To prevent division of the property and subsequent loss of flood protection.

Recommended Provision	Specific Easement Language ³	Notes
Mining	The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any other method that disturbs the surface of the land is prohibited.	To ensure floodway function and attenuation capacity.

Additional Notes on Agricultural Structures

Structures on farmland can significantly impact flood waters. Buildings reduce land area for flood water attenuation. They require roads for access and encourage further development. Provisions can stipulate that only necessary agricultural structures can be erected in the floodplain. The “necessary agricultural structures” can be specified on a case by case basis to 1) allow the landowner full extent of his desired rights; and 2) provide the greatest amount of floodplain protection benefits. An example of a necessary structure may be a single family residential dwelling for agricultural employees. Fences can be another necessary structure in agriculture, to prevent animals from getting either in or out. However, certain types of fences, such as stone or concrete fences, can divert flood waters. Flood protection values can be maintained by including provisions that prohibit the construction of any impermeable fences.

Building envelopes are a standard method to specify provisions on a case by case basis. Building envelopes designate areas of farmland for the construction of certain pre-determined structures. Building envelopes can minimize the impacts structures have on floodplains by siting construction in non-vital areas of the floodplain. Sizing of the building envelope should allow the owner flexibility for future expansion of agricultural structures, but not to significantly alter flood protection capacity if the building envelope were fully developed with structures. The appropriate size should be decided on a case by case basis. The National Resource Conservation Service (NRCS) offers a “2% rule” as a guide to protect soils on large farms. This rule states that building envelopes are not to be greater than 2% of the farmland acreage.

Potential Additional Provisions for Soap Lake Easements

Easement provisions should be tailored to each landowner’s needs while still providing the necessary amount of floodplain protection described above. The easement provisions presented in this section are not required, however, they should be considered. Some provide a greater level of floodplain protection, others provide ecological benefits. The most important factor in determining the value of these potential easement provisions is the landowner’s acceptance of the provision. It is in the best interest of the impending easement holder to allow the landowner a certain amount of leeway in the easement negotiation process. Table 6 presents the potential additional easement provisions. Additional discussion of select provisions follows.

Table 6: Potential Additional Easement Provisions

Potential Provision	Description	Discussion
Right of First Refusal & Option to Purchase	Requires landowner to offer easement holder option to purchase before selling land to outside parties.	Must determine if beneficial to easement holder on case by case basis. May be difficult to negotiate with landowner.
Public Use of Land	Provide use of land for public uses: trails officially identified by publication of this document, education, research (documentation, surveys)	May be difficult to negotiate with landowner. Five proposed trails in project area; recent trail easement recorded on Silacci property.
Restriction on Agricultural Practices	Require crops that leave stubble in the winter; Prohibit cultivation during the winter season; Prohibit use of plastic ground cloths	To maintain surface roughness to protect flood attenuation capacity. Economic impacts of prohibitions not evaluated; further research recommended.
Restrictions on Farm Roads	Prohibit roads which parallel major drainages and creeks	Will aid in flood protection capacity.
Best Management Practices (BMPs) and Reduction of Pollutant Loading	Identify and implement agricultural methods that will reduce or eliminate the release of sediment, nutrients, and other pollutants between crops and wetlands/riparian corridors.	Agricultural runoff is receiving more attention from regulatory agencies as a source of pollution in waterways and water bodies. It is suggested to start self-regulation before the State imposes restrictions. BMPs will help wildlife habitats as well.
Preserve Scenic Quality of Land	Prohibit uses that would destroy scenic quality of land	In most cases this is difficult to negotiate with landowners
Protect and Enhance Wildlife Habitats	Establish areas where agriculture is prohibited or certain types of agriculture or seasons or use are restricted	To protect wildlife corridors. Restrictions on tree crops, vineyards, and other permanent crops whose operations tend to leave the ground bare in the winter, may provide additional flood protection benefits. Wildlife habitat agricultural easements may cost more than ordinary agricultural easements, providing landowners with a larger easement payment.
Protect Riparian Corridors	Establish areas where agriculture is prohibited and provide for a restoration management plan.	Provides natural sediment removal, surface water benefits. Protected riparian corridors currently exist in Soap Lake project area.

Right of 1st Refusal and Option to Buy

This provision is a way for the land to be acquired in full by the easement holder in the event the landowner chooses to sell the land. The landowner must offer the easement holder the option to buy the land before putting it on the market. The value of the land is

determined by appraisal. Landowners may not favor this provision because other parties, such as developers, may offer above market compensation for the land.

Public Use of Land and Recreational Use of Land

Discussions with the landowner will determine if the land will be open to public use or recreational use. There are many different types of uses possible through these provisions, among them:

- Recreational/public use for trails- incorporates trail easements
- Public use for educational purposes- wildlife research, school field trips
- Recreational use for bird watching

For all uses besides trail easements, the provisions can be established on a case by case basis. For trail easements, however, there are planned trails and established county policies that may dictate provisions.

Trail Easements

There are currently five proposed trails within the Soap Lake Project boundaries (5/04). The establishment of trail easements is consistent with member county policies encouraging trail development⁴. In cases where a landowner is willing, trail easements can establish a specific, permanent right of passage over the land. Inclusion of such trails could require further environmental analysis to ensure that potential impacts to natural or cultural resources are avoided or minimized. Trail easements can be designated separately from agricultural conservation easements yet be situated side by side to ensure no gaps in protection. Additionally, provisions regarding the management of the trail must be established. Maintenance money is not always readily available. It should be included in the provisions that the group implementing the trail is responsible for trail maintenance and associated costs. The flood and conservation easement holder and the land owner would not be responsible for maintenance or associated costs. Table 7 lists the five proposed trails within the Soap Lake floodplain.

Table 7: Proposed Trails in Soap Lake Project Area

Trail Name	Description
Juan Bautista de Anza National Historic Trail	National Historic Trail- National Park Service in partnership with fed, state, local agencies, non-profits, landowners
Monterey Yosemite State Trail	Regional trail and a “Corridor of Statewide Importance”
Benito-Clara Trail	Regional trail- Trail follows Pajaro River within project area.
Coyote Creek/Llagas Creek Trail	Regional trail- Trail route within public lands
Bay Area Ridge Trail	Bay Area Ridge Trail Council- a non-profit organization

⁴ The San Benito General Plan states a willingness to “explore options for regional trail connections with Santa Clara and Monterey Counties” (San Benito County 1993, Open Space and Conservation Element Update, Objective 3 under Goal 9). The Santa Clara County Trails Master Plan Update states that trail routes designated on the Countywide Trails Master Plan Map will not be pursued unless “(1) the land use designation is amended to a non-Agricultural designation, or (2) there is specific interest or consent expressed by a willing property owner/seller.” (Santa Clara County Trails Master Plan Update, 1995, Policy Code PR-TS 2.3)

Roadways

Roadways have significant impacts on floodplains. Compared to vegetated farmland, both paved and unpaved roads have substantially reduced surface roughness. This provides a conduit for flood waters. In particular, roadways aligned parallel to the direction of flood water flows can dramatically increase downstream flows. Whereas flood waters would normally be subject to the energy dissipating capabilities of vegetated farmland, roadways provide a channel to short circuit past the natural attenuation characteristics of farmland.

Roadway provisions may address:

- Construction of new paved or unpaved roadways
- Paving of unpaved roadways
- Expansion of existing roadways
- Raised roadways (divides floodplain)

Specifics regarding these items must be determined on a case by case basis. In general, all of the items reduce the current abilities of the floodplain to protect against flooding and should be prohibited. However, because these provisions may be impractical for landowners, roadway provisions must be discussed during the easement creation process.

Resources

Information on conservation easements and other matters of conservation can be found through local land trusts. These non-profit organizations can assist in the acquisition of property or easements for conservation purposes. Below is a list of several land trusts in the region:

- American Wildlands- <http://www.wildlands.org/>
- The Nature Conservancy- <http://nature.org/>
- American Farmland Trust- <http://www.farmland.org/>
- San Benito Agricultural Land Trust- <http://sanbenitoaglandtrust.org/>
- The Land Trust for Santa Clara County- <http://www.landtrustscc.com>

A number of example easement documents and easement guides were used to complete this TM. They are listed below.

- Pennsylvania Easement Guide- <http://www.dcnr.state.pa.us/brc/easements.pdf>
- California Department of Conservation Easement example- <http://www.consrv.ca.gov/DLRP/cfcp/overview/index.htm>
- Silacci Trail Easement example- from Santa Clara County Open Space Authority
- Santa Clara County Parks and Recreation Department Trail Easement Guide

APPENDIX A

California Department of Conservation Example Conservation Easement

1 After recording, please return to:

2
3 LAND TRUST
4
5
6
7

8 DEED OF AGRICULTURAL CONSERVATION EASEMENT
9

10 This Deed of Agricultural Conservation Easement is granted on this ____ day of
11 _____ 200__, by _____ (“Grantor”), to
12 _____ (“Grantee”), for the purpose of forever conserving the
13 agricultural productive capacity and open space character of the subject property.
14

15 Witness that:

16
17 The Grantor is the sole owner in fee simple of the farm property (“Property”) legally
18 described in Exhibit A (“Legal Description”), attached to and made a part of this
19 Agricultural Conservation Easement (“Easement”), which consists of approximately
20 _____ acres of land and is commonly known as the “_____
21 Farm/Ranch,” together with buildings and other improvements, located in
22 _____ County, California, and identified by assessor’s parcel
23 number(s) _____. The existing buildings and
24 improvements on the Property are shown within Building Envelope as depicted in Exhibit
25 B (“Building Envelope and Existing Improvements”), also attached to and made a part of
26 this Easement. Except as shown in Exhibit B, the Property is open farmland, whose soils
27 have been classified as ____ (prime farmland, farmland of statewide importance,
28 etc.) _____ by the Natural Resource Conservation Service, U.S. Department of
29 Agriculture, and by the California Department of Conservation Farmland Mapping and
30 Monitoring Program, because this land has a soil quality, growing season, and moisture
31 supply needed for sustained agricultural production.
32

33 The agricultural and other characteristics of the Property, its current use and state of
34 improvement, are documented and described in a Baseline Documentation Report
35 (“Baseline Report”), prepared by the Grantee with the cooperation of the Grantor and
36 incorporated herein by this reference. Grantor and Grantee acknowledge that it is
37 complete and accurate as of the date of this Easement. Both the Grantor and Grantee
38 shall retain copies of this report. The Baseline Report may be used to establish that a
39 change in the use or condition of the Property has occurred, but its existence shall not
40 preclude the use of other evidence to establish the condition of the Property as of the date
41 of this Easement.
42

43 The Department of Conservation’s (“Department”) California Farmland Conservancy
44 Program has made a grant of funds to the Grantee to support the acquisition of this
45 Easement. These funds represent a substantial investment by the People of the State of
46 California in the long-term conservation of valuable agricultural land, and the retention of

47 agricultural land in perpetuity. The Property and this Easement have met the California
48 Farmland Conservancy Program's mandatory eligibility criteria and certain selection
49 criteria, and have multiple natural resource conservation objectives. The rights vested
50 herein in the State of California arise out of the State's statutory role in fostering the
51 conservation of agricultural land in California and its role as fiduciary for the public
52 investment represented here.

53
54 The Grantor grants this Easement for valuable consideration to the Grantee for the
55 purpose of assuring that, under the Grantee's perpetual stewardship, the agricultural
56 productive capacity and open space character of the Property will be conserved and
57 maintained forever, and that uses of the land that are inconsistent with these conservation
58 purposes will be prevented or corrected. The parties agree, however, that the current
59 agricultural use of, and improvements to, the Property are consistent with the
60 conservation purposes of this Easement.

61
62 The conservation purposes of this Easement are recognized by, and the grant of this
63 Easement will serve, the following clearly delineated governmental conservation policies:

64
65 The Farmland Protection Policy Act, P.L. 97-98, 7 U.S.C. section 4201, et seq.,
66 whose purpose is "to minimize the extent to which Federal programs and policies
67 contribute to the unnecessary and irreversible conversion of farmland to
68 nonagricultural uses, and to assure that Federal programs are administered in a
69 manner that, to the extent practicable, will be compatible with State, unit of local
70 government and private programs and policies to protect farmland;"

71
72 The federal Farmland Protection Program, authorized by P.L. 104-127, 16 U.S.C.
73 3830, section 388, whose purpose is to authorize the Secretary of Agriculture to
74 purchase conservation easements or other interests in land with prime, unique, or
75 other productive soil for the purpose of protecting topsoil by limiting non-
76 agricultural uses of the land;

77
78 Section 815 of the California Civil Code, which defines perpetual conservation
79 easements;

80
81 California Constitution Article XIII, section 8, California Revenue and Taxation
82 Code, sections 421.5 and 422.5, and California Civil Code section 815.1, under
83 which this Agricultural Conservation Easement is an enforceable restriction,
84 requiring that the Property's tax valuation be consistent with restriction of its use
85 for purposes of food and fiber production and conservation of natural resources.

86
87 Division 10.2 (sections 10200, et seq.) of the California Public Resources Code,
88 which creates the California Farmland Conservancy Program;

89
90 Section 51220 of the California Government Code, which declares a public
91 interest in the preservation of agricultural lands;

The California General Plan law, section 65300 et seq., and section 65400 et seq. of the California Government Code, and the _____ County General Plan, as amended in _____, which includes as one of its goals to protect all viable farmlands designated as prime, of statewide importance, unique, or of local importance from conversion to and encroachment of non-agricultural uses;

Resolution No. _____, approved by the Board of Supervisors of _____ County on the _____ day of _____, 20__ which expresses support for the acquisition of this Easement on the Property, and such protection is consistent with the County's General Plan.

The Grantee is a California nonprofit organization within the meaning of California Public Resources Code section 10221 and California Civil Code section 815.3, and is a tax exempt and "qualified conservation organization," within the meaning of sections 501(c)(3) and 170(b)(1)(A)(iv) as defined by the Internal Revenue Code.

The Grantor owns the entire fee simple interest in the Property, including the entire mineral estate. Any and all financial liens or financial encumbrances existing as of the date of the execution of this Easement have been subordinated. Exhibit C (Prior Encumbrances) sets forth all the non-financial encumbrances. Grantor represents and warrants that the Property is not subject to any other conservation easement whatsoever.

Now, therefore, for the reasons given, and in consideration of their mutual promises and covenants, terms, conditions and restrictions contained herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Grantor voluntarily grants and conveys to the Grantee, and the Grantee voluntarily accepts, a perpetual conservation easement, as defined by section 815.1 of the California Civil Code and California Public Resources Code section 10211, and of the nature and character described in this Easement for the purpose described below, and agree as follows:

1. Purpose.

The purpose ("Purpose") of this Easement is to enable the Property to remain in productive agricultural use by preventing uses of the Property that will impair or interfere with the Property's agricultural productive capacity, its soils, and its agricultural character, values, and utility. To the extent that the preservation of the open space character and [scenic, habitat, natural, or historic, etc.] values of the Property are consistent with such use, it is within the purpose of this Easement to protect those values.

2. Right to Use Property for Agricultural Purposes.

Grantor retains the right to use the Property for agricultural purposes, or to permit others to use the Property for agricultural purposes, in accordance with applicable law as long as the agricultural productive capacity and open space character of the Property are not thereby significantly impaired.

139
140 *3. Prohibited Uses.*
141

142 Grantor shall not perform, nor knowingly allow others to perform, any act on or affecting
143 the Property that is inconsistent with this Easement. Any use or activity that would
144 diminish or impair the agricultural productive capacity and open space character (or
145 scenic, habitat, natural, historic etc. values) of the Property or that would cause
146 significant soil degradation or erosion is prohibited. This Easement authorizes the
147 Grantee to enforce these covenants in the manner described herein. However, unless
148 otherwise specified, nothing in this Easement shall require the Grantor to take any action
149 to restore the condition of the Property after any Act of God or other event over which it
150 had no control. Grantor understands that nothing in this Easement relieves it of any
151 obligation or restriction on the use of the Property imposed by law.
152

153 *4. Permission of Grantee.*
154

155 Where Grantor is required to obtain Grantee's permission or approval for a proposed
156 action hereunder, said permission or approval (a) shall not be unreasonably delayed or
157 withheld by Grantee, (b) shall be sought and given in writing, with copies of all
158 documents to be provided to the Department, and (c) shall in all cases be obtained by
159 Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or
160 approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion
161 and in good faith, determines that the proposed action will not significantly diminish or
162 impair the agricultural productive capacity and open space character of the Property.
163

164
165 *5. Construction or Placement of Buildings and Other Structures.*
166

167 Grantor may undertake construction, erection, installation or placement of buildings,
168 structures, or other improvements on the Property only as provided in paragraphs (a)
169 through (d) below. All other construction, erection, installation or placement of
170 buildings, structures, or other improvements on the Property is prohibited.

171 Before undertaking any construction, erection, installation or placement that requires
172 advance permission, the Grantor shall notify the Grantee and obtain prior written
173 permission from Grantee.
174

175 For purposes of this section, "improvements" shall not refer to trees, vines, or other living
176 improvements planted for agricultural purposes, nor shall it refer to irrigation
177 improvements necessary or desirable to irrigate the Property for agricultural purposes, all
178 of which may be made without the permission of Grantee.
179

180 (a) Fences— Existing fences may be repaired and replaced, and new fences may be
181 built anywhere on the Property for purposes of reasonable and customary
182 agricultural management, and for security of farm produce, livestock, equipment,
183 and improvements on the Property, without any further permission of the Grantee.
184

(b) Agricultural Structures & Improvements – Existing agricultural structures and improvements as shown in Exhibit B may be repaired, reasonably enlarged, and replaced at their current locations for agricultural purposes without further permission from the Grantee. New buildings and other structures and improvements to be used solely for agricultural production on the Property, including barns, equipment sheds, and improvements to be used for agricultural production purposes or sale of farm products predominantly grown or raised by the Grantor on the Property, but not including any dwelling or farm labor housing, may be built on the Property within the Building Envelope depicted in Exhibit B, without further permission of the Grantee. Any other agriculture production or marketing-related structures may be constructed only with the written permission of the Grantee pursuant to Paragraph 4.

(c) Single-Family Residential Dwellings – The single-family dwelling shown in Exhibit B may be repaired, reasonably enlarged or replaced at the current location entirely within the Building Envelope shown in Exhibit B without further permission of the Grantee. No other residential structures may be constructed or placed on the Property except for agricultural employee housing per Paragraph 5(d). (NOTE: Depending on the size of the Property and other circumstances, it may be appropriate to establish a maximum size of the single-family dwelling.)

(d) Agricultural Employee Housing – No agricultural employee housing may be constructed or placed on the Property without advance written permission of Grantee. Grantee may only grant permission pursuant to Paragraph 4 and only if Grantor can demonstrate to Grantee's satisfaction that such agricultural employee housing is reasonable and necessary for the agricultural operation of the Property. Any agricultural employee housing must be located entirely within the Building Envelope as established in Exhibit B.

6. *Subdivision.*

The division, subdivision, defacto subdivision or partition of the Property, including transfer of development rights, whether by physical, legal, or any other process, is prohibited.

The Grantor agrees the Property has _____ existing legal parcel(s), and that no additional, separate legal parcels currently exist within the Property that may be recognized by a certificate of compliance pursuant to California Government Code section 66499.35 based on previous patent or deed conveyances, subdivisions, or surveys. Grantor will not apply for or otherwise seek recognition of additional legal parcels within the Property based on certificates of compliance or any other authority. Grantor shall continue to maintain the parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel.

Lot line adjustment may be permitted solely with the written approval of Grantee pursuant to Paragraph 4, and for purposes of maintaining, enhancing or expanding

agricultural practices or productivity on the Property. Grantor shall take no other steps towards lot line adjustment unless and until Grantee approves the request.

7. Development Rights.

Grantor hereby grants to Grantee all development rights except as specifically reserved in this Easement, that were previously, are now or hereafter allocated to, implied, reserved, appurtenant to, or inherent in the Property, and the parties agree that such rights are released, terminated, and extinguished, and may not be used on or transferred to any portion of the Property as it now or later may be bounded or described, or to any other property adjacent or otherwise, or used for the purpose of calculating permissible lot yield of the Property or any other property. This Easement shall not create any development rights.

8. Mining.

The mining or extraction of soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance, using any method that disturbs the surface of the land, is prohibited.

9. Paving and Road Construction.

No portion of the Property presently unpaved shall be paved or otherwise be covered with concrete, asphalt, or any other paving material, nor shall any road for access or other purposes be constructed without the advance written permission of the Grantee pursuant to Paragraph 4. Unpaved farm roads as required by agricultural operations are permitted without further Grantee permission. Grantor shall notify Grantee of any relocation or addition of unpaved roads.

10. Trash.

The dumping or accumulation of any kind of trash, refuse, vehicle bodies or parts, or hazardous waste on the Property, other than farm-related trash and refuse produced on the Property, is prohibited. However, this shall not prevent the storage of agricultural products and byproducts on the Property, so long as it is done in accordance with all applicable government laws and regulations.

11. Commercial Signs.

Commercial signs (including billboards) unrelated to permitted activities conducted on the Property are prohibited.

12. Recreational Uses.

Resort structures, golf courses, non-residential swimming pools, public or commercial airstrips, commercial equestrian facilities, public or commercial helicopter pads, and any other non-agricultural recreational structures or facilities are prohibited on the Property.

Other buildings and facilities for any other private recreational use may not be built on the Property without the advance written permission of the Grantee pursuant to Paragraph 4. The use of motorized vehicles off roadways and outside of the building envelope is prohibited except where used for agricultural production or for the purpose of monitoring this Easement.

13. *Water Rights.*

Grantor shall retain and reserve all ground water, and all appropriative, prescriptive, contractual or other water rights appurtenant to the Property at the time this Easement becomes effective. The Grantor shall not permanently transfer, encumber, lease, sell, or otherwise separate such quantity of water or water rights from title to the Property itself. No permanent separation of water or water rights shall be permitted. All water shall be retained in _____ County for agricultural production only. Water may be distributed to a contiguous property or other property owned or leased by Grantor on an annual basis for agricultural production only. Any temporary distribution of water shall not impair the long-term agricultural productive capacity or open space character of the Property.

14. *Rights Retained by Grantor.*

Subject to Paragraph 7 and to interpretation under Paragraph 22, as owner of the Property, the Grantor reserves all interests in the Property not transferred, conveyed, restricted or prohibited by this Easement. These ownership rights include, but are not limited to, the right to sell, lease, or otherwise transfer the Property to anyone Grantor chooses, as well as the right to privacy and the right to exclude any member of the public from trespassing on the Property and any other rights consistent with the purpose of this Easement. Nothing contained herein shall be construed as a grant to the general public of any right to enter upon any part of the Property.

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

15. *Responsibilities of Grantor and Grantee Not Affected.*

Other than as specified herein, this Easement is not intended to impose any legal or other responsibility on the Grantee, or in any way to affect any existing obligation of the Grantor as owner of the Property. Among other things, this shall apply to:

(a) Taxes – The Grantor shall be solely responsible for payment of all taxes and assessments levied against the Property. If the Grantee ever pays any taxes or assessments on the Property, or if the Grantee pays levies on Grantor’s interest in order to protect Grantee’s interests in the Property, the Grantor will reimburse the Grantee for the same.

(b) Upkeep and Maintenance – The Grantor shall be solely responsible for the upkeep

and maintenance of the Property, to the extent it may be required by law. The Grantee shall have no obligation for the upkeep or maintenance of the Property. If Grantee acts to maintain the Property in order to protect Grantee's interest in the Property, Grantor will reimburse Grantee for any such costs.

(c) Liability and Indemnification – In view of Grantee's and the Department of Conservation's negative rights, limited access to the land, and lack of active involvement in the day-to-day management activities on the Property, Grantor shall indemnify, protect, defend and holds harmless the Grantee, the Department of Conservation, their officers, directors, members, employees, contractors, legal representatives, agents, successors and assigns from and against all liabilities, costs, losses, orders, liens, penalties, claims, demands, damages, expenses, or causes of action or cases, including without limitation reasonable attorneys' fees, arising out of or in any way connected with or relating to the Property or the Easement. The Grantor shall be solely liable for injury or the death of any person, or physical damage to any property, or any other costs or liabilities resulting from any act, omission, condition, or other matter related to or occurring on or about the Property, regardless of cause, unless due to the negligence or willful misconduct of Grantee or the Department of Conservation. Grantee shall be named additional insured on Grantor's general liability insurance policy.

Grantee and the Department of Conservation shall have no responsibility for the operation of the Property, monitoring of hazardous conditions on it, or the protection of Grantor, the public or any third parties from risks relating to conditions on the Property. Without limiting the foregoing, Grantee shall not be liable to Grantor or other person or entity in connection with consents given or withheld, or in connection with any entry upon the Property occurring pursuant to this Easement, or on account of any claim, liability, damage or expense suffered or incurred by or threatened against Grantor or any other person or entity, except as the claim, liability, damage, or expense is the result of Grantee's or Grantee's agents and assigns negligence, gross negligence, or intentional misconduct.

16. *Monitoring.*

The Grantee shall act as custodian of this Easement in order to uphold the Purpose of this Easement. Grantee's responsibilities as custodian of the Easement, include, but are not limited to, annual monitoring, such additional monitoring as circumstances may required, record keeping, and enforcement, for the purpose of preserving the Property's agricultural productive capacity and open space character in perpetuity. With reasonable advance notice, the Grantee has the right to enter upon, inspect, observe and evaluate the Property to identify the current condition of, and uses and practices on the Property and to monitor the use and practices regarding the Property to determine whether they are consistent with this Easement.

The Grantee shall report to the Department of Conservation by June 30 annually after the annual monitoring visit, describing method of monitoring, condition of the Property, stating whether any violations were found during the period, describing any corrective

actions taken, the resolution of any violation, and any transfer of interest in the Property. Failure to do so shall not impair the validity of this Easement or limit its enforceability in any way.

17. *Enforcement.*

The Grantee may take all actions that it deems necessary to ensure compliance with the terms, conditions, covenants and purposes of this Easement. The Grantee shall have the right to prevent and correct violations of the terms of this Easement. If the Grantee finds what it believes is a violation, it may at its discretion take appropriate legal action to ensure compliance with the terms, conditions, covenants and purposes of this Easement and shall have the right to correct violations and prevent the threat of violations. Except when an ongoing or imminent violation could irreversibly diminish or impair the agricultural productive capacity and open space character of the Property, the Grantee shall give the Grantor written notice of the violation and thirty (30) days to correct it, before filing any legal action.

If a court with jurisdiction determines that a violation may exist or has occurred, the Grantee may obtain an injunction, specific performance, or any other appropriate equitable or legal remedy. A court may also issue an injunction requiring the Grantor to restore the Property to its condition prior to the violation. In any case where a court finds that a violation has occurred, the Grantor shall reimburse the Grantee for all its expenses incurred in stopping and correcting the violation, including but not limited to reasonable attorney's fees. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time. Grantee's remedies under this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

Without limiting Grantor's liability therefor, the Grantee shall apply damages recovered to the cost of undertaking any corrective action on the Property. Should the restoration of lost values be impossible or impractical for whatever reason, the Grantee shall apply any and all damages recovered to furthering the Grantee's mission, with primary emphasis on agricultural conservation easement acquisition and enforcement.

In the event the Grantee fails to enforce any term, condition, covenant or restriction of this Easement, as determined by the Director of the California Department of Conservation, the Director of the Department and his or her successors and assigns shall have the right to enforce this Easement after giving notice to the Grantee and Grantor and providing a reasonable opportunity under the circumstances for the Grantee to enforce the term, condition, covenant or restriction, including ensuring that the agricultural productivity of the Property and any multiple uses created by incidental activities, as specified in Public Resources Code Section 10262, are not significantly impaired. In the event that the Director of the Department determines that the Grantee has failed to enforce any of the terms, conditions, covenants or restrictions of the Easement, the Director of the Department and his or her successors and assigns shall be entitled to exercise the right to enter the Property granted to Grantee including right of immediate

entry where the Director of the Department or his or her successor or assign determines that immediate entry is required to prevent, terminate or mitigate a violation of this Easement.

Failure or refusal to exercise any rights under the terms of this Easement by Grantee in the event of a breach by Grantor of any term herein shall not constitute a waiver or forfeiture of Grantee's right to enforce any term, condition, covenant or purpose of this Easement or any other term herein.

18. Transfer of Easement.

This Easement may only be assigned or transferred to a private nonprofit organization that, at the time of transfer, is a "qualified organization" under section 170(h) of the U.S. Internal Revenue Code and under section 815.3(a) of the California Civil Code and has similar purposes to preserve agricultural lands and open space. If no such private nonprofit organization exists or is willing to assume the responsibilities imposed by this Easement, then this Easement may be transferred to any public agency authorized to hold interests in real property as provided in section 815.3(b) of the California Civil Code. Such an assignment or transfer may proceed only if the organization or agency expressly agrees to assume the responsibility imposed on the Grantee by the terms of this Easement and is expressly willing and able to hold this Easement for the purpose for which it was created. All transfers shall be duly recorded.

If the Grantee should desire to transfer this Easement, the Grantee must obtain written permission from the Grantor and the Department of Conservation, which permission shall not be unreasonably withheld.

If the Grantee or its successors ever ceases to exist or no longer qualifies under section 170(h) of the U.S. Internal Revenue Code, or applicable state law, the California Department of Conservation, in consultation with Grantor, shall identify and select an appropriate private or public entity to whom this Easement shall be transferred.

19. Transfer of Property Interest.

Any time the Property itself, or any interest in it, is transferred by the Grantor to any third party, the Grantor shall notify the Grantee in writing at least thirty (30) days prior to the transfer of the Property or interest, and the document of conveyance shall expressly incorporate by reference this Easement. Any document conveying a lease of the Property shall expressly incorporate by reference this Easement. Failure of the Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any way.

20. Amendment of Easement.

This Easement may be amended only with the written consent of the Grantor, the Grantee, and the Director of the California Department of Conservation. Any such amendment shall be consistent with the purposes of this Easement and with the Grantee's

easement amendment policies, and shall comply with all applicable laws, including section 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section, and with section 815 et seq. of the California Civil Code, and the California Farmland Conservancy Program Act as codified in section 10200, et seq., of the California Public Resources Code, and any regulations promulgated thereunder. No amendment shall diminish or affect the perpetual duration or the purpose of this Easement nor the status or rights of the Grantee under the terms of this Easement.

This Easement and any amendment to it shall be recorded in _____ County. Copies of any amendments to this Easement shall be provided to the Department of Conservation.

21. *Termination of Easement.*

(NOTE: Landowners may waive the administrative termination provision defined in Public Resources Code sections 10270-77, in which case potential easement termination shall be governed solely by judicial termination proceedings. Under such cases, the Department will continue to include language concerning proceeds as defined in paragraph 21(b).)

(a) Termination of the easement shall be governed by sections 10270-10277 of the Public Resources Code of California. This Easement shall not be terminated unless it meets the criteria for termination of this Easement including, California Constitution Article XIII, section 8, California Public Resources Code sections 10273, 10274, and 10275, Revenue and Taxation Code sections 421.5 and 422.5, and other applicable laws, rules and regulations. Grantee and the Department of Conservation shall be notified at least thirty (30) days prior to any initiation of any proceedings to terminate this Easement.

No inaction or silence by Grantee shall be construed as abandonment of the Easement. The fact that the land is not in agricultural use is not reason for termination of this Easement. Other than pursuant to eminent domain or purchase in lieu of eminent domain, no other voluntary or involuntary sale, exchange, conversion or conveyance of any kind of all or part of the Property, or of any interest in it, shall limit or terminate the provisions of this Easement.

Should this easement be condemned or otherwise terminated on any portion of the Property, the balance of the Property shall remain subject to this Easement. In this event, all relevant related documents shall be updated and re-recorded by the Grantee to reflect the modified easement area.

(b) The grant of this Easement gives rise to a property right, immediately vested in Grantee. For the purpose of determining the amount to be paid by Grantor in a repurchase of the Easement at the time of a voluntary termination pursuant to sections 10270-10277 of the Public Resources Code or pursuant to judicial proceedings, and for the purpose of allocating proceeds from a sale or other disposition of the Property at the time of termination, the Easement and Grantee's property right therein shall have a value equal to the difference between the then current fair market value of the Property

unencumbered by this Easement and the then current fair market value encumbered by this Easement. The values shall be determined by an appraisal performed by an appraiser jointly selected by Grantor and Grantee. The cost of the appraisal shall be paid by Grantor and the appraisal is subject to approval by the Department. Nothing herein shall prevent Grantor, Grantee or the Department from having an appraisal prepared at its own expense.

Upon approval of termination of this Easement or any portion thereof, Grantor shall reimburse the State of California, Department of Conservation California Farmland Conservancy Program Fund and _____ (other funders) the amount equal to the Easement that is terminated pursuant to section 10276 of the California Public Resources Code. The amount required to be paid in connection with Grantor's repurchase shall be distributed as follows: (i) to the State of California, Department of Conservation, California Farmland Conservancy Program Fund, _____ (%); and (ii) to the _____, _____ (%), representing the proportion of easement value originally contributed by these agencies for the purchase of this Easement. This Easement shall not be deemed terminated until such payment is received by all parties. Grantee, in using any funds received from the termination of this Easement, shall use the funds in a manner consistent with the Purpose of this Easement.

(NOTE: Alternate language available for projects seeking IRS recognition of a charitable donation)

(c) If the Easement or any portion thereof is terminated by an entity exercising the power of eminent domain, by purchase in lieu of condemnation, or for any other reason, the amount of proceeds due from Grantor will be determined according to applicable state law and distributed as set forth in Paragraph 21(b).

(d) If Grantee obtains payment on a claim under a title insurance policy insuring this Easement, payment shall be distributed as forth in Paragraph 21(b).

22. Interpretation.

- (a) This Easement shall be interpreted under the laws of the State of California, resolving any ambiguities and questions of the validity of specific provisions so as to give maximum effect to its conservation purposes.
- (b) References to authorities in this Easement shall be to the statute, rule, regulation, ordinance or other legal provision that is in effect at the time this Easement becomes effective.
- (c) No provision of this Easement shall constitute governmental approval of any improvements, construction or other activities that may be permitted under this Easement.

23. Perpetual Duration.

This Easement, pursuant to California Civil Code section 815.1 shall run with the land in perpetuity. Every provision of this Easement that applies to the Grantor or Grantee shall

also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear.

No merger of title, estate or interest shall be deemed effected by any previous, contemporaneous, or subsequent deed, grant, or assignment of an interest or estate in the Property, or any portion thereof, to Grantee, or its successors or assigns. It is the express intent of the parties that this Easement not be extinguished by, or merged into, or modified, or otherwise deemed affected by any other interest or estate in the Property now or hereafter held by Grantee or its successors or assigns.

24. *Notices.*

Any notices to Grantor and Grantee required by this Easement shall be in writing and shall be personally delivered or sent by first class mail, to the following addresses, unless a party has been notified by the other of a change of address:

To Grantor:

To Grantee:

Any notices required by this Easement to be sent to the Department of Conservation shall be in writing and shall be personally delivered or sent by first class mail, at the following address, unless a party has been notified by the Department of a change of address:

To the Secretary of Resources/Department of Conservation:

Department of Conservation
801 K Street
Sacramento, CA 95814
Attn: California Farmland Conservancy Program

25. *Grantor's Environmental Warranty.*

The Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Property and hereby promises to defend and indemnify Grantee and the Department of Conservation against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste or violation of federal, state or local

environmental laws.

Notwithstanding any other provision herein to the contrary, the parties do not intend this Easement be construed such that it creates in or gives the Grantee or the Department of Conservation:

- (a) the obligations or liability of an “owner” or “operator” as those words are defined and used in environmental laws, as defined below, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 USC section 9601 et seq. and hereinafter “CERCLA”);
- (b) the obligations or liability of a person described in CERCLA at 42 USC section 9607 (a)(3) or (4);
- (c) the obligations of a responsible person under any applicable Environmental Laws, as defined below;
- (d) the right to investigate and remediate any Hazardous Materials, as defined below, associated with the Property; or
- (e) any control over Grantor’s ability to investigate, remove, remediate, or otherwise clean up any Hazardous Materials associated with the Property.

The term “Hazardous Materials” includes, without limitation, (a) material that is flammable, explosive, or radioactive; (b) petroleum products; and (c) hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials defined in the CERCLA (42 USC section 9601 et seq.), the Hazardous Materials Transportation Act (49 USC section 5101, et seq.), the Hazardous Waste Control Law (California Health and Safety Code section 25100 et seq.), the Hazardous Substance Account Act (California Health and Safety Code section 25300 et seq.), and in the regulations adopted and publications promulgated pursuant to them, or any other applicable federal, state, or local laws, ordinances, rules, or regulations now in effect or enacted after this date.

The term “Environmental Laws” includes, without limitation, any federal, state or local or administrative agency statute, regulation, rule, ordinance, order or requirement relating to pollution, protection of human health, the environment or Hazardous Materials.

26. Grantor’s Title Warranty; No Prior Conservation Easements.

Grantor represents and warrants that Grantor owns the entire fee simple interest in the Property, including the entire mineral estate, and hereby promises to defend this Easement against all claims that may be made against the Easement. Any and all financial liens or financial encumbrances existing as of the date of the execution of this Easement have been subordinated. Exhibit C (Prior Encumbrances) sets forth all the non-financial encumbrances. Grantor represents and warrants that the Property is not subject to any other conservation easement whatsoever.

27. Subsequent Easements.

The grant of any easements, other interests in land, or use restrictions that might diminish

or impair the agricultural productive capacity or open space character of the Property is prohibited. Grantor may grant subsequent conservation easements or use restrictions on the Property provided that such easements or use restrictions do not restrict agricultural husbandry practices, or interfere with any of the terms of this Easement as determined by Grantee. "Husbandry practices" means agricultural activities, such as those specified in section 3482.5(e) of the California Civil Code, conducted or maintained for commercial purposes in a manner consistent with proper and accepted customs and standards, as established and followed by similar agricultural operations in the same locality. Grantee's written approval shall be obtained at least thirty (30) days in advance of executing any proposed easement or use restriction on the Property, and such subsequent easements and use restrictions shall make reference to this Easement and be subordinate to this Easement. The Grantee shall notify the Department in the event that it approves any subsequent easement or use restriction. Grantee shall disapprove any proposed subsequent easement or use restriction which appears to restrict agricultural husbandry practices, or diminishes or impairs the agricultural productive capacity or open space character of the Property.

28. *Severability.*

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 the agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

29. *Entire Agreement.*

This Easement is the final and complete expression of the agreement between the parties with respect to this subject matter. Any and all prior or contemporaneous agreements with respect to this subject matter, written or oral, are merged into and superceded by this written instrument.

30. *Acceptance.*

As attested by the signature of its President affixed hereto, in exchange for consideration, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Deed of Agricultural Conservation Easement.

To Have and To Hold, this Deed of Agricultural Conservation Easement unto the Grantee, its successors and assigns, forever.

In Witness Whereof, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

Witness:

Grantor:

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by _____

Accepted:

Witness: Grantee: _____

by _____

Acknowledgments

County of _____)

State of California), ss

On this ____ day of _____, 20____, before me,
_____, personally appeared _____, personally known to
me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose
name(s) is/are subscribed to the within instrument and acknowledged to me that
he/she/they executed the same in his/her/their authorized capacity(ies), and that by
his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of
which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public (SEAL)

My commission expires:

County of _____)
State of California) ss:

Personally appeared before me _____ on this _____ day of _____, 20____, and acknowledged that he is the _____, and that the execution of this Deed of Agricultural Conservation Easement is with the authority of the Board of Directors of said corporation.

Notary Public (SEAL)

My commission expires:

Acknowledgments

County of _____)

State of California), ss

On this _____ day of _____, 20____, before me, _____, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public (SEAL)

My commission expires:

County of _____)
State of California) ss:

Personally appeared before me _____ on this _____ day of _____, 20____, and acknowledged that he is the _____, and that the execution of this Deed of Agricultural Conservation Easement is with the authority of the Board of Directors of said corporation.

Notary Public (SEAL)

My commission expires:

Exhibit A (Legal Description) Attached

Exhibit B (Building Envelope and Existing Improvements) Attached

Exhibit C (Prior Encumbrances) Attached