

Appendix B.

*CFLA Conservation Easement Template and
Questions and Answers*

The draft easement template below is the starting point from which we would negotiate easement terms with individual landowners. Our conservation easements are customized to fit a landowner's individual situation, and the terms of the easement are established only after detailed discussions between the landowner and the Fish and Wildlife Service. We are providing the attached template easement to give landowners an idea of the terms and restrictions a CFLA easement would typically include.

**UNITED STATES DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
GRANT OF EASEMENT FOR RANGELAND CONSERVATION**

THIS GRANT OF EASEMENT, by and between hereinafter referred to as Grantors, and the UNITED STATES OF AMERICA, hereinafter referred to as Grantee, acting by and through the Secretary of the Interior or his authorized representative,

WHEREAS, the Fish and Wildlife Act of 1956, 16 U.S.C. 742a-742j; authorizes the Secretary of the Interior to acquire lands or interests therein for the development, advancement, management, conservation, and protection of fish and wildlife resources. The purpose of this easement is to conserve and protect in perpetuity working rangeland and the fish and wildlife resources it supports, on the land described in Exhibit A. The conservation purposes of this Easement shall be achieved through continued ranching and managed grazing activities;

NOW, THEREFORE, for and in consideration of the sum of _____ Dollars (\$ _____), to the Grantors in hand paid, the receipt of which is hereby acknowledged, Grantors hereby grant and convey unto the United States, and its assigns, an estate, interest and perpetual rangeland conservation easement, in lands of the Grantors, described in Exhibit A, and depicted in Exhibit B attached hereto and made a part hereof.

There is included in this Grant of Easement a right of access with 48 hour notice, by designated representatives of the U.S. Fish and Wildlife Service over any and all Easement Lands as reasonably necessary for the limited purposes of verifying compliance by the Grantor with the terms and conditions of this easement and exercising Grantee's rights under this Grant. If the Easement Area is not accessible by public roads, Grantor hereby grants the U.S. Fish and Wildlife Service adequate access to the Easement Area for the limited purposes of monitoring and enforcement of the terms of this Easement.

The lands referenced in this easement contain _____ acres, more or less, all being located in _____ County, State of California, described in Exhibit A.

SUBJECT, however, to all valid existing rights-of-way for highways, roads, railroads, pipelines, canals, laterals, electrical transmission lines, telegraph and telephone lines, cable lines, and all outstanding mineral rights in third parties.

There are excepted and reserved from this Grant of Easement all minerals, including gas, oil, and other hydrocarbon substances, underlying the Easement Lands, and this Grant of Easement is subject to all existing easements and rights-of-way of record held by third parties, and to all outstanding mineral rights, including all oil and gas leases of record, held by third parties. Grantor and Grantee agree that the exploration, development, and production of reserved oil and gas and other mineral deposits by Grantor or authorized third parties shall be considered compatible with maintenance and use of the Easement Lands and Waters for rangeland conservation purposes and shall be authorized by the U.S. Fish and Wildlife Service provided Grantee, through the U.S. Fish and Wildlife Service shall have the right to approve the locations and methods of all proposed exploration, development and production operations to ensure such operations are carried out in a manner that is compatible with protection of Grantee's easement interest, and shall be authorized and not unreasonably withheld by the Grantee.

The conveyance hereunder shall be effective on the date of the execution of this Grant of Easement by the Secretary of the Interior or his authorized representative.

The Grantors, for themselves, and for their heirs, successors and assigns, lessees, and any other person claiming under them, covenant and agree that they will cooperate in the maintenance and protection of the easement areas. The parties acknowledge that an Easement Report documenting existing conditions has been prepared for the property, at the expense of the U.S. Fish and Wildlife Service with consent and cooperation of Landowner. The Report documents the current agricultural, physical, and overall biological conditions of the property as well as its current uses and state of improvement at the time of the grant of this easement. A copy of this Report shall be maintained on file by both the Grantor and the U.S. Fish and Wildlife Service and by this reference made a part thereof. The parties hereby acknowledge that the Report accurately reflects the condition of the property subject to this easement at the time of conveyance.

No rights herein are granted to the general public for access to or entry upon the land subject to this grant of easement for any purpose.

Activities that are consistent with the conservation purposes identified herein, including ranching, and those uses and practices consistent with the terms hereof are identified in Exhibit C.

The restrictions hereby imposed upon the use of said lands of the Grantors and the activities that Grantors covenant to refrain from doing upon said lands, except as may be authorized from time to time by the express prior written consent of the U.S. Fish and Wildlife Service, are identified in Exhibit D.

It is further understood that the limited rights and interests granted to the UNITED STATES OF AMERICA herein shall become part of the National Wildlife Refuge System and shall be administered by the U. S. Fish and Wildlife Service, pursuant to the National Wildlife Refuge Systems Administration Act, 16 U.S.C.

This Grant of Easement shall be binding upon, and shall inure to the benefit of, Grantor and its successors and assigns and Grantee and its assigns.

This Grant of Easement does not encompass or purchase any restoration rights and imposes no other obligations or restrictions on Grantor and neither its successors, nor any other person or

entity claiming under them, shall be in any way restricted from using all of the subject lands in the customary manner except as provided herein.

IN WITNESS WHEREOF the Grantors have hereunto set their hands and seals this XX day of ,20 .

Landowner Signature(s)

Landowner Signature(s)

ACKNOWLEDGMENT

STATE of ()
COUNTY of ()

On this ___ day of _____ in the year 20__ before me personally appeared known to me to be the persons(s) described in and who executed the foregoing instrument and acknowledged to me that (they) (he/she) executed the same as (their) (his/her) free act and deed.

Notary Public

My commission expires

(SEAL)
ACCEPTANCE

The Secretary of the Interior, acting by and through his authorized representative, has executed this agreement on behalf of the United States this _____ day of _____, 20__.

UNITED STATES OF AMERICA

By:
Title:

U.S. Fish and Wildlife Service

EXHIBIT A: LEGAL DESCRIPTION OF EASEMENT LANDS [AND EXCLUDED LANDS, IF APPLICABLE]

EXHIBIT B: MAP OF EASEMENT LANDS [AND EXCLUDED LANDS, IF APPLICABLE]

EXHIBIT C: PERMITTED USES AND PRACTICES

The following uses and practices by the Grantor, though not an exhaustive recital of all uses and practices of said lands, are hereby deemed to be consistent with the conservation purposes of the Easement. Any proposed activities or uses not identified below shall require prior written approval by the Fish and Wildlife Service. In addition, certain uses and practices identified below are subject to specific conditions or require prior approval. The remainder of these consistent uses shall not be precluded, prevented, or limited by the Easement.

1. Livestock grazing.
2. Constructing, maintaining, repair, and replacing non-building ranch facilities used in normal and customary ranching activities, including stock ponds, corrals, holding fields, squeezes, loading chutes, equipment loading ramps, fences, tanks, and troughs, primarily to support uses of or activities on the Easement Area authorized by this Conservation Easement.
3. Maintaining, repairing, and replacing in the same general location, water distribution and irrigation facilities including wells, spring boxes, headgates, weirs, pipelines, irrigation ditches, and reservoirs and utility facilities (including gas, electrical and telecommunication facilities) that support uses of or activities on the Easement Area authorized by this Conservation Easement.
4. With prior written approval by the U.S. Fish and Wildlife Service, construction of new water distribution and irrigation facilities including wells, spring boxes, headgates, weirs, pipelines, irrigation ditches, and reservoirs and utility facilities (including gas, electrical and telecommunication facilities) that support uses of or activities on the Easement Area authorized by this Conservation Easement, provided that any construction or development activities do not create barriers that inhibit the movement or migration of wildlife or cause long-term impairment to the wetland habitat.
5. Maintaining and rebuilding existing unpaved roads, on the original alignment. Unpaved existing roads may be relocated as unpaved roads as reasonably required by ranching operations; provided, that every abandoned road shall be returned to a natural condition.
6. Maintaining, repaving, and rebuilding existing paved roads on the original alignment.

Driveways to residential buildings permitted by this Easement may be paved at Landowner's discretion without further permission from the U.S. Fish and Wildlife Service. No other construction or paving of any road within the Easement Area is allowed without written permission from the Fish and Wildlife Service, which permission must be supported by Landowner's demonstration to the reasonable satisfaction of the U.S. Fish and Wildlife Service that the proposed construction or paving will not impair Conservation Values. For purposes of this paragraph, "pave", "paved", or "paving" shall include covering of the soil surface with concrete, asphalt, or other impermeable or permeable paving material.

7. Harvesting native or tame grasses for hay production. Periodic renovation or reseeded of existing tame grass stands will be permitted with prior written approval of the U.S. Fish and Wildlife Service. No approval will be granted to break (farm, rip, disc, plow) native rangeland.
8. Causing minor surface disturbances (less than one acre in size) associated with excavating small amounts of fill material or gravel for non-commercial use on the property, or constructing non-building ranch facilities; water distribution and irrigation facilities; utility facilities; and/or roads as authorized under Provisions 2 through 6 of this Exhibit.
9. Control of noxious weeds or exotic pests including the use of chemical pesticides and/or biological control agents in accordance with applicable Federal and State statutes and regulations.
10. Cutting, harvesting or removing dead or diseased trees for non-commercial use, or trees that present a hazard to persons or property, or the cutting of firewood, posts and poles for non-commercial use.
11. Existing cropland (farmed, ripped, disced, plowed) areas or other parcels specifically identified on Exhibit A and the easement report are exempt from Provision 1 of Exhibit D.
12. The following non-commercial and commercial passive recreational uses may be undertaken without further permission from the U.S. Fish and Wildlife Service: hunting, fishing, horseback riding, camping, wildlife viewing, photography, hiking, and picnicking. Other non-commercial recreational uses including nonmotorized cycling, target shooting, rock collecting, social gatherings, rodeo type events, and on-road vehicle travel may be undertaken without further permission from the U.S. Fish and Wildlife Service; provided, that no such use shall be allowed to impair working rangeland and the fish and wildlife resources it supports. All other recreational uses are prohibited on the Easement Lands except with the advance written permission of U.S. Fish and Wildlife Service, which must be supported by Landowner's showing to the reasonable satisfaction of the U.S. Fish and Wildlife Service that the proposed use is consistent with the conservation purposes of this easement.

EXHIBIT D: PROHIBITED USES AND PRACTICES

The following uses and practices on the property are hereby deemed to be inconsistent with the purpose of the easement, and are expressly prohibited:

1. Significantly altering the topography or other natural features by digging, excavating, plowing, discing, cutting, filling, removing or otherwise destroying the vegetative cover, including agricultural crop production or timber harvesting upon said lands delineated on Exhibit A, except as otherwise provided in Exhibit C.
2. Subdividing or de facto subdividing, and/or developing the area for residential, commercial, industrial or any other purposes.
3. Erecting, constructing or placing any structures, buildings or improvements including trailers, mobile homes or other temporary living quarters, except as otherwise provided in Exhibit C.
4. Constructing any power generation facilities such as coal or gas-fired, wind, solar, or hydroelectric, other than to support uses of or activities on the Easement Area authorized by this Conservation Easement.
5. Using or developing said lands for a game, fur, bird or fish farm, including the confinement, rearing, release and/or propagation of exotic or native game farm animals, birds, furbearers or fish.
6. Establishing or maintaining any commercial feedlot, defined for purposes of this easement as a facility used for the purpose of receiving, confining and feeding livestock for hire.
7. Dumping or disposing of refuse and disposing of any material which is toxic to wildlife or considered to contaminate soil, groundwater, streams, lakes or wetlands.
8. Using lead ammunition for hunting or depredation shooting.
9. The commercial use of motorized vehicles off of roads is prohibited, except when necessary for maintenance of utilities, retrieval of large game, or for emergency purposes. Landowner and Landowner's family members, employees and nonpaying guests may use motorized vehicles for activities allowed by the Conservation Easement, except that motorized vehicle races and the construction of motorized off-road vehicle courses are specifically prohibited.

10. Transferring, encumbering, leasing, selling, or otherwise separating water rights associated with the Easement Area.
11. Granting any additional easements, rights-of-way, or other interests in the Easement Lands, other than a fee or leasehold interest, undivided interest or security interest (mortgage or deed of trust) without the prior written authorization of Grantee given through the Fish and Wildlife Service. Grantor shall not grant or otherwise transfer any remaining interest in the easement lands to any other person or entity or to other lands or otherwise abandon or relinquish any Easement Waters without the prior written authorization of Grantee given through the U.S. Fish and Wildlife Service. Such authorization will be given unless the Secretary or his designated representative determines that the proposed interest or transfer will interfere with the use of the Easement Lands. This paragraph shall not prohibit the transfer of a fee title or leasehold interest in the Easement Lands that is subject to the terms of this Grant of Easement. Nor shall it prevent or limit the Grantor and its members from transferring corporate stock or to license or lease hunting or fishing rights to the subject property.

DRAFT

Questions and Answers for Landowners about Proposed California Foothills Legacy Area (CFLA) Rangeland Conservation Easements

Below are answers to some frequently asked questions about easements. Questions 1 - 5 address what easements are, who can hold them, and why a landowner may be interested in an easement. Questions 6 - 8 address how easements are valued. Question 9 describes how we typically exclude certain areas from easement restrictions. Questions 10 and 11 address easement monitoring and hunting and fishing, respectively. If you have questions that are not addressed below or need further clarification, feel free to contact us at fw8plancomments@fws.gov.

Question 1. **What is a conservation easement?**

Answer 1. A conservation easement is a voluntary, legally-binding agreement between a landowner and a government agency or qualified organization regarding the future uses of private property. The conservation easement is recorded and becomes part of the deed to the property.

The option to place conservation easements on private land is an important private property right that comes with land ownership in the United States. As a private property owner, you have a number of private rights that go along with the ownership of your property. By granting a conservation easement, you agree to sell some of those rights. In a conservation easement, the owner of the property, also known as the Grantor of the easement, retains all rights of ownership not specifically prohibited or limited by the easement. These include the rights to exclude public access and to sell the property. The easement holder, or Grantee, only has rights specifically included in the easement. The rights typically granted by the landowner to the easement holder include development rights and the right to monitor the property on a regular basis for any activity that is inconsistent with the purposes of the conservation easement.

Question 2. **What is the “template easement” for the California Foothills Legacy Area?**

Answer 2. The template easement is the starting point from which we negotiate easement terms with individual landowners. Our conservation easements are customized to fit a landowner’s individual situation, and the terms of the easement are established only after detailed discussions between the landowner and the Fish and Wildlife Service. We are providing the attached template easement to give landowners an idea of the terms and restrictions a CFLA easement would typically include.

Question 3. **What does the template easement mean when it says that “...the limited rights and interests granted to the UNITED STATES OF AMERICA herein shall become part of the National Wildlife Refuge System and shall be administered by the United States Fish and Wildlife Service...”? Will my ranch become a National Wildlife Refuge?**

Answer 3. Absolutely not. This statement simply means that the easement rights granted to us would be administered by the land management division of the Fish and Wildlife Service, also known as the National Wildlife Refuge System, in accordance with the terms of the easement. These rights are specifically spelled out in the easement document.

Question 4. Would third parties be allowed to hold FWS-funded easements?

Answer 4. Several organizations and individuals have asked if the FWS can grant funds to third parties such as land trusts for easements. While this may be done with funds granted through other programs of the FWS (e.g., habitat conservation plan and recovery land acquisition grants), the California Foothills Legacy Area program is different since it would be funded by the Land and Water Conservation Fund and the Migratory Bird Conservation Fund. Congress mandates that only FWS can hold easements funded by these sources. However, we are exploring options to work with 3rd parties such as land trusts to do outreach and monitoring for the program.

Question 5. Why Grant or Sell a Conservation Easement?

Answer 5. Ranchers choose to donate or sell conservation easements for a variety of reasons. Often, the decision comes from the landowner's connection to their land, and their desire to see it remain intact and used for ranching, open space or wildlife habitat into the future. Some people also want to ensure that their children can inherit their property in its entirety and find that easements can reduce their estate tax burden. Conservation easements are powerful estate planning tools that can help keep land in the family.

Question 6. What does a conservation easement do to the value of my land?

Answer 6. As explained above, a conservation easement removes some of the rights that normally come with ownership of land. Those rights have a value and are determined by an appraisal. Theoretically, the value of the easement is the amount of value reduction in the current market price of the property caused by the restrictions contained in the easement.

Question 7. How is the value of an easement determined?

Answer 7. An appraiser will perform an analysis of the market value of a property based upon the "highest and best use" of the land and what similar properties in the area are selling for without the encumbrance of an easement. The appraiser compiles recent comparable sales of lands in the area to determine the approximate market price of the property. This is known as the "Before" value, i.e. the value before an easement is placed on the property. The appraiser will then determine the value of the property with the restrictions in place. Most of the time this means that the appraiser will look at properties that do not have the potential to be developed beyond what the easement allows on the property he is appraising for the easement. This is referred to as the "After" value – the market price after the easement is placed on the property. The difference between these "Before" and "After" prices is the value of the easement.

Question 8. What amount can I expect to receive from a conservation easement and how soon?

Answer 8. The value of a conservation easement is based upon both the extent of the restrictions spelled out in the easement and the market for land in a given region. The more development rights a landowner chooses to sell, the higher an appraiser is able to value the easement. Also, the market for properties with development potential and conservation properties vary from region to region. As a general rule, the easement value will fall somewhere between 35 and 65% of the market value of the property without the easement. However, there are many variables and we have seen easement values greater or less than this in rare cases.

When the Fish and Wildlife Service has an interest in acquiring an easement that a landowner offers to sell us, we order an appraisal from our Office of Valuation Services. Staff at that office in turn hire qualified private appraisers who prepare an appraisal report. Once our Office of Valuation Services reviews the report for errors, we will present the landowner with an offer based upon the value from the appraisal. At that point, the landowner can decide to sign a purchase option or not. The purchase option usually gives the Fish and Wildlife Service 18 months to obtain funding for the purchase.

Question 9. What if I want to expand my house or make other changes to my buildings and infrastructure?

Answer 9 A representative of the Fish and Wildlife Service will work with landowners to make sure that each easement anticipates their long-term needs for the future. Highly developed areas of concentrated use such as barns, garages, homes, equipment storage areas, are usually excluded from the easement. This excluded area is not affected by the easement and the landowner can use it as they always have. We generally suggest an exclusion area of 1 to 5 acres around these developed areas to allow for future needs because the Fish and Wildlife Service does not want to get involved in decisions about how these areas are managed. After the exclusion area is determined, the Fish and Wildlife Service sends a surveyor to the property. The legal description of the exclusion is prepared and specifically excluded from the legal description in the easement deed. Planning for anticipated future use at this stage is very important because the Fish and Wildlife Service cannot sell back any portion of the easement once it is purchased.

Question 10. How often will a representative of the Fish and Wildlife Service visit my property?

Answer 10. When the Fish and Wildlife Service purchases an easement on a property we are purchasing a partial interest in the land. Therefore, we have the obligation to the American public to periodically inspect what we purchased. Visits by the Fish and Wildlife Service representative are also an opportunity to keep in touch and discuss issues and opportunities that are happening in the general area. In general, visits will be scheduled well in advance. We prefer that the landowner or their representative be present because we are now partners in

conservation of the land. Our representatives will not be visiting you more than annually unless there is a specific reason, such as a violation of the terms of the easement, or you invite us to discuss a project.

Question 11. Can I continue to hunt and fish on my property?

Answer 11. Yes. Hunting and fishing by you, your friends, or leasees would continue to be allowed and would still be regulated by the California Department of Fish and Wildlife. The easement does not allow the public to use your land for hunting or any other purpose without your permission.