

A photograph of a red barn with a cupola on top, situated in a field of tall, dry grass. The sky is a mix of blue and orange, suggesting sunset or sunrise. The barn is on the left side of the frame, and the field extends to the foreground. A line of trees is visible in the background behind the barn.

Conservation Options: Easements and Other Government Programs

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Hello and Disclaimer

- Discussion purposes and introduction to the topic.
- Conservation easements are a complex area of law and a world unto themselves.
- Helpful to have at least a basic understanding in order to provide options and insights to clients.

What is a Conservation Easement?

- “A conservation easement is a legal agreement between a landowner and an eligible organization that restricts the activities that may take place on a property in order to protect the land’s conservation values. Each easement’s restrictions are tailored to the particular property, to the interests of the individual owner, and to the policies and purposes of the easement holder. Also known as conservation servitudes and conservation restrictions, conservation easements are recorded as deed restrictions, and the restrictions apply to all future owners of the land. The right to enforce the restrictions is held by the easement holder. To understand the easement concept, think of owning land as holding a bundle of rights. A landowner may sell or give away the whole bundle of rights, or just one or two of those rights. The rights given away, sold, or otherwise transferred to the easement holder may include, for example, the right to construct buildings, to subdivide the land, to restrict access, or to harvest timber. By selling or donating a conservation easement, a landowner retains some rights and gives up others by deeding them to a qualified holder.
- The specific rights a property owner gives up and retains when granting a conservation easement are spelled out in each easement document. The owner and the prospective easement holder first identify the conservation values of the property, and then decide which uses and activities need to be restricted to protect these values. When an easement is signed and recorded, the owner (also called the grantor) conveys the rights to enforce these restrictions to a qualified conservation recipient (also called a holder or grantee), such as a land trust, governmental agency, or historic preservation organization.”
 - –[The Conservation Easement Handbook, Chapter 1](#)
- See also Title 55, Chapter 21 of Idaho Code, Uniform Conservation Easement Act

Idaho's Uniform Conservation Easement Act

– Provisions to Note

- Except as provided in subsection 2 of Idaho Code Section 55-2103, a conservation easement is unlimited in duration unless designated otherwise in the agreement.
- A conservation easement does not affect the market value of the property for ad valorem tax purposes, meaning the market value for assessment purposes shall be calculated as if the easement does not exist. I.C. 55-2109.
- Conservation easement must be held by a governmental body empowered to hold an interest in real property or a charitable organization which purpose or powers include retaining or protecting real property and related values.

What are the Benefits of a Conservation Easement?

- Conservation easements can be an effective and low cost tool to protect land for future generations.
- It is a legally binding agreement between a landowner and a land trust or authorized government agency wherein the landowner retains many private property rights.
- If donated, it may provide tax benefits to landowners. However, in order to be deductible, donated conservation easements must be legally binding, permanent restrictions on use, and modification and development of the property, such as parks, wetlands, farmland, forest land, scenic areas, historic land or historic structures.
- The land remains in private ownership and does not automatically make property open to the public.

What are the Disadvantages of a Conservation Easement?

- Typically perpetual.
- Heirs may not have the same conservation goals for the property.
- The future value of the property is likely diminished due to the restrictions.
- Not all land qualifies.
- There may be tax considerations and it is advised to discuss options with a qualified accountant.

Conservation Easements for Agriculture Use

- Landowners can also partner with a land trust to balance conservation goals with development.
- Landowners/producers enter into a conservation agreement to preclude subdividing and developing and continue to own and farm the land. In exchange, the landowner is compensated for a percentage of the value of the land.
- There is growing interest in these types of conservation agreements due to the loss every year of prime farm ground in Idaho to subdivisions and other development.
- If you're interested, please visit the Land Trust of the Treasure Valley's website (<https://www.lttv.org/agricultural-easements>) to read more about the intent and drive behind conservation easements to preserve agricultural use.

Example of Conservation Easements on
the Next Slides

**DEED OF CONSERVATION EASEMENT
VANDERBILT CONSERVATION PROJECT**

This Conservation Easement ("Easement") is made the 13 day of October, 2010 by and between LuBertus Vanderbilt and Mary Vanderbilt, husband and wife (the "Grantors"), whose current address is 20742 E. Hayden Lake Road, Hayden Lake, Idaho 83835, and the State of Idaho, Idaho Fish and Game Commission, Idaho Department of Fish and Game (hereinafter "Holder"), whose current mailing address is 600 South Walnut Street, Boise, Idaho 83707.

RECITALS

- A. Grantors are the owners of approximately 310 acres of real property in Kootenai County, Idaho, hereinafter referred to as the "Vanderbilt Conservation Project" or as the "Protected Property", the exact legal description for which is attached hereto as Attachment "A" and shown in Attachment "B", which is made a part hereof by this reference.
- B. The Protected Property consists of natural areas of significant ecological, scenic and aesthetic value, and has substantial value and potential as open space and a natural, ecological and scientific resource.
- C. The Holder is an eligible donee, as it has a commitment to protect the conservation purposes of the easement herein, and it has the resources to enforce the restrictions thereof.
- D. The Idaho Conservation Easement Act (Idaho Code Section 55-2101, *et seq.*) permits the creation of conservation easements, among other things, for the purpose set forth in Section 1 below.
- E. Grantors and Holder recognize the natural, scenic, aesthetic, and special character and opportunity for enhancement of the Protected Property, and have as a common purpose the conservation and protection in perpetuity of the Protected Property as "a relatively natural habitat of fish, wildlife or plants or similar ecosystem" as that phrase is used in Section 170(h)(4)(A)(ii) of the Internal Revenue Code of 1986 (hereinafter "Code"), and the regulations promulgated there under, by placing voluntary restrictions upon the use of the Protected Property and by providing for the transfer of affirmative rights to the Holder for the protection of the Protected Property.
- F. The specific conservation values of the Protected Property on the date of this Easement are documented in the Baseline Documentation Report ("Baseline Report"), dated September 23, 2009, a copy of which is on file with both the Grantors and the Holder. The parties agree that the Baseline Report provides an accurate representation of the Protected Property and the condition of the same as of the date of this Easement as required by 26 C.F.R. 1.170 A-14(g)(5), and it is intended to serve as an objective informational baseline for monitoring compliance with the terms of this Easement.
- G. A critical conservation value on the Protected Property that needs protection, and is protected by this Easement, is the exceptional wildlife habitat as documented by the Baseline Report.

H. The Protected Property is adjacent to and abuts protected U.S. National Forest Service land. Therefore, this Easement helps expand the protected area for elk, deer, raptors, and other wildlife and other conservation values by blocking up two protected areas of land.

NOW, THEREFORE, the Grantors, in consideration of the foregoing Recitals and of the mutual covenants, terms, conditions and restrictions set forth herein, do hereby grant, bargain, sell, warrant and convey unto the Holder, and its successors and assigns, forever, a perpetual conservation easement and restriction, all as more particularly set forth below, in the Protected Property.

SECTION 1

PURPOSE

The purpose of this Easement is to assure that the Protected Property will be retained in perpetuity predominantly in its natural, scenic and open condition, as evidenced by the Baseline Report, for conservation purposes including protection and restoration of moose, elk, deer, raptors, and other wildlife habitat and to prevent any use of the Protected Property which will significantly impair or interfere with the conservation values of the Protected Property, its wildlife habitat, natural resources or associated ecosystem. After the original Grantors, LuBertus and Mary Vanderbilt, are no longer residing on the Protected Property, it will be managed under a wildlife management plan.

SECTION 2

HOLDER'S AFFIRMATIVE RIGHTS

1. Protection of Conservation Values

The Holder has the right to protect and preserve the conservation values of the Protected Property, as set forth in the Baseline Report, to prevent any activity that is inconsistent with the Purpose and conservation values of this Easement, and to require that Grantors' reserved rights be exercised in a manner that avoids unnecessary harm to the conservation values to be protected by this Easement.

2. Right of Entry and Access

- a. The Holder shall have the right with prior notice to Grantors to enter the Protected Property for the purposes of the inspection, preservation, and protection of the conservation values of the Protected Property and to prevent any activity on or use of Protected Property that is inconsistent with the Purpose of this easement.
- b. Monitoring inspection. Monitoring inspections shall be scheduled by mutual agreement of Holder and Grantors. If a time cannot be mutually set, either by lack of agreement, or by the inability of the Holder to reach the Grantors, the Holder will notify Grantors at least two weeks in advance by certified mail, and make good faith attempts to contact Grantors.

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by phone and/or e-mail. Nevertheless, even if the Holder can not reach the Grantor, the Holder has the right to enter and inspect the property for compliance with this Easement.

3. Management Plan. The Holder at its discretion may prepare a management plan for rare, threatened or endangered plant or animal species, in the event that they are found to exist on the Protected Property, and it may implement said plan with the permission of the Grantors, which permission shall not be unreasonably withheld or delayed.
4. Enforcement. Holder has the right to enforce this Easement by proceedings at law or in equity, including, without limitation, the right to require the restoration of the Protected Property to a condition in compliance with this Easement.
5. Forbearance. No forbearance, delay or omission by the Holder in the exercise of any right, enforcement action, or remedy upon a breach by Grantors shall impair the Holder's rights or remedies or be construed as a waiver.
6. Holder's Remedies In Case of a Violation
 - a. Notice of Violation; Corrective Action. If the Holder determines that Grantors are in violation of the terms of this Easement or that a violation is imminent, Holder shall give written notice to Grantors of such violation and demand cessation of the offending activities and corrective action sufficient to cure the violation and, where the violation involves injury to the Protected Property resulting from any use or activity inconsistent with the purpose of this Easement, to restore the portion of the Protected Property so injured to its prior condition in accordance with a plan approved by Holder.
 - b. Emergency Enforcement. If the Holder, in its sole discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Protected Property, the Holder may pursue its remedies under this provision without prior notice to Grantors or without waiting for the period provided for cure to expire.
 - c. Injunctive Relief. If the Grantors fail to cure the violation within 30 days after receipt of notice thereof from Holder, or if Grantors, under circumstances where the violation cannot reasonably be cured within a 30-day period, fail to begin curing such violation within 30 days after notice, or if they fail to continue diligently to cure such violation until finally cured, Holder may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement, to enjoin the violation, *ex parte* as necessary, by temporary or permanent injunction, and to require restoration of the Protected Property to the condition that existed prior to such injury or violation.
 - d. Scope of Relief. Holder's rights under this section apply equally in the event of either actual or imminent violations of the terms of this Easement. Grantors agree that Holder's remedies at law (damages) for any violation of the terms of this Easement may be inadequate and that Holder shall be entitled to the injunctive relief described above, both prohibitive and mandatory, in addition to such other relief to which Holder may be entitled, including specific performance of the terms of this Easement, without the necessity of proving either actual damages or the inadequacy of otherwise available legal remedies.

Holder's remedies described in this section shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity.

- e. Damages. If injunctive relief is inadequate to compensate Holder fully for the loss of or damage to Holder's rights hereunder, or if restoration is impossible, Holder shall be entitled to recover any damages for violation of the terms of this Easement or injury to any conservation values protected by this Easement, including, without limitation, damages of the Protected Property to the condition that existed prior to any such injury. Without limiting Grantors' liability therefore, Holder, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Protected Property.
- f. Costs of Enforcement. All reasonable costs incurred by Holder in enforcing the terms of this Easement against Grantors, including, without limitation, costs and expenses of suit and reasonable attorneys' fees, and any costs of restoration necessitated by Grantors' violation of the terms of this Easement, shall be borne by Grantors; provided however, if Grantors ultimately prevail in a judicial enforcement action, each party shall bear its own costs.
- g. Acts Beyond Grantors' Control. Grantors shall not be responsible for any injury to or change in the Protected Property resulting from causes beyond Grantors' control, including without limitation, fire, flood, storm and earth movement, or from any prudent action taken by Grantors under emergency conditions to prevent, abate, or mitigate significant injury to the Protected Property resulting from such causes.

SECTION 3

GRANTORS' RESERVED RIGHTS

Specific rights retained by Grantors include, but are not limited to:

1. The normal quiet enjoyment of the property, where it does not conflict with the conservation values of this Easement.
2. Right to sell or otherwise convey the property.
3. The right to use the property for personal use including recreation.
4. The right to repair and remodel the existing house, barns and storage buildings. For the existing primitive cabin on the property, it may be repaired and remodeled, provided that further development of the existing primitive cabin is prohibited. The existing cabin shall not be further developed or expanded. The cabin shall not be expanded in size.
5. The right to maintain the utilities (including water, electricity, phone, septic systems with drain-fields, sewers, or other utilities) needed to serve the existing house, outbuildings and primitive cabin.
6. The right to post small "no trespassing" signs. The original Grantors, LuBertus and Mary Vanderbilt may post "no hunting" signs. After LuBertus and Mary Vanderbilt no longer live on the property, then the property will be managed under a wildlife management plan and all signage will be managed under the plan.

2. Development of property in any form is prohibited.
3. Construction of buildings and placement of buildings on the property are prohibited (Exception: replacement of buildings and structures in case of destruction).
4. Existing primitive cabin – Further development of the existing primitive cabin is prohibited. The existing cabin shall not be further developed or expanded. The cabin shall not be expanded in size (Exception: the cabin may be repaired or remodeled).
5. Commercial, manufacturing and industrial business uses of the property are prohibited (Exception: LuBertus Vanderbilt and Mary Vanderbilt, and no others, may build and rent to prospective tenants no more than 20 storage units).
6. Harassment of wildlife by people, vehicles, aircraft, helicopters or domestic animals (such as by dogs) is prohibited (Exception: legal harvesting of wildlife by hunters).
7. Placement of signs and billboards on the property are prohibited (Exception: the original Grantors may post no trespassing and no hunting signs and the Idaho Department of Fish and Game may post signs under a Wildlife Management Plan).
8. Timber harvest, tree cutting and clear-cutting of timber are prohibited (Exception: see exceptions for harvest for forest health and domestic firewood purposes in reserved rights).
9. Exploration, drilling, mining development or removal of oil, gas, other hydrocarbons, minerals, ores, rock, gravel/sand, soil, peat or other materials is prohibited. This prohibition includes the leasing, sale or other transfer of the rights to such minerals, hydrocarbons or materials that are on or under the property.
10. The use of all terrain vehicles (ATV's), off-road vehicles, and off-road motorcycles for recreational purposes or for racing is prohibited (Exception: ATV's may be used for access to the property by the homeowners and for persons with handicaps or limited walking abilities).
11. The use of heavy equipment on the property is prohibited. (Exception: heavy equipment may be used when needed on rare instances for timber management, house remodeling, road maintenance and utilities maintenance).
12. After the original Grantors, LuBertus Vanderbilt and Mary Vanderbilt are dead, the raising or keeping of livestock, horses, llamas, alpacas, wild game, and exotic animals on the property is prohibited. Game farms are prohibited.
13. Dumping or storage of trash, garbage, junk, toxic chemicals, toxic substances, hazardous waste, or similar offensive or toxic materials on site is prohibited.
14. All farming and ranching activities will be prohibited after the original Grantors, LuBertus Vanderbilt and Mary Vanderbilt, are dead.
15. Any new development, ditching, and diversion of natural streams, springs, or water courses are prohibited.
16. The keeping of more than two dogs and two cats is prohibited. This restriction is needed to prevent dogs and cats from harassing and stressing the wildlife on the property.
17. The construction of livestock fences that do not comply with wildlife standards is prohibited (Exception: see the exception for the small gardens in the reserved rights). This restriction is needed to prevent migration problems for the elk and deer on the property.

7. The right to maintain the existing driveway and existing roads.
8. The right to maintain unpaved natural hiking trails on the property.
9. The right to selectively harvest timber to maintain forest health on the property only if the harvest is necessary due to a serious or catastrophic act of nature or problem (such as forest fires, wind storms, ice or snow damage, or severe insect or disease damage), provided that the following preconditions are met: (a) A timber management plan and timber harvest plan must be prepared in advance of any cutting of trees or timber harvest by a certified professional forester. The Holder will review the plans in advance for compliance with the conservation easement and the Holder may approve, modify or disapprove the plan. The Holder will not unreasonably withhold their approval; (b) Any cutting of trees, shrubs, and brush removal will be on a careful selective basis to preserve the integrity of the timber stands, aesthetics of the scenic views, forest health, general wildlife habitat and ecology of the property; (c) Best timber management parties and sustainable forestry practices will be used; (d) Standing old growth trees and eagle nesting or perching trees shall not be cut. Only the original Grantors LuBertus Vanderbilt and Mary Vanderbilt may use and keep for their benefit any profit generated from timber harvested under the timber management plan.
10. The right to cut dead and down trees for domestic firewood to be used on-site. Standing dead trees and snags identified as such under the forest management plan may not be cut.
11. The original Grantors LuBertus Vanderbilt and Mary Vanderbilt have the right to ranch and farm and raise or keep livestock and horses, and to rehabilitate wildlife as permitted.
12. The right to construct a fence around a domestic garden and orchard, and around the residential home and out buildings. To protect the elk, deer and other wildlife, barbed wire or similar fencing materials are prohibited.
13. The right to install a perimeter livestock fence that complies with wildlife standards as described in the Bureau of Land Management (BLM) Fencing Manual Handbook H-1741-1, 1989. Any new perimeter fencing will comply with the BLM standards.
14. The right for the landowners or persons with handicap to use ATV's for access to the property.
15. The right by the landowner or a person with a handicap to use a snowmobile for access to the property.

SECTION 4

PROHIBITIONS AND RESTRICTIONS

The following uses and activities are prohibited:

1. Subdivision – Subdivision, re-subdivision, or division of the land and property by any methods, whether legal or defacto, whether through sales, surveys, leases, deed splits, condominium creation or any method, is prohibited. If the property is transferred it shall be transferred as a single parcel; it shall not be divided or subdivided by the sale or transfer process.

2. Development of property in any form is prohibited.
3. Construction of buildings and placement of buildings on the property are prohibited (Exception: replacement of buildings and structures in case of destruction).
4. Existing primitive cabin – Further development of the existing primitive cabin is prohibited. The existing cabin shall not be further developed or expanded. The cabin shall not be expanded in size (Exception: the cabin may be repaired or remodeled).
5. Commercial, manufacturing and industrial business uses of the property are prohibited (Exception: LuBertus Vanderbilt and Mary Vanderbilt, and no others, may build and rent to prospective tenants no more than 20 storage units).
6. Harassment of wildlife by people, vehicles, aircraft, helicopters or domestic animals (such as by dogs) is prohibited (Exception: legal harvesting of wildlife by hunters).
7. Placement of signs and billboards on the property are prohibited (Exception: the original Grantors may post no trespassing and no hunting signs and the Idaho Department of Fish and Game may post signs under a Wildlife Management Plan).
8. Timber harvest, tree cutting and clear cutting of timber are prohibited (Exception: see exceptions for harvest for forest health and domestic firewood purposes in reserved rights).
9. Exploration, drilling, mining development or removal of oil, gas, other hydrocarbons, minerals, ores, rock, gravel/sand, soil, peat or other materials is prohibited. This prohibition includes the leasing, sale or other transfer of the rights to such minerals, hydrocarbons or materials that are on or under the property.
10. The use of all terrain vehicles (ATV's), off-road vehicles, and off-road motorcycles for recreational purposes or for racing is prohibited (Exception: ATV's may be used for access to the property by the homeowners and for persons with handicaps or limited walking abilities).
11. The use of heavy equipment on the property is prohibited. (Exception: heavy equipment may be used when needed on rare instances for timber management, house remodeling, road maintenance and utilities maintenance).
12. After the original Grantors, LuBertus Vanderbilt and Mary Vanderbilt are dead, the raising or keeping of livestock, horses, llamas, alpacas, wild game, and exotic animals on the property is prohibited. Game farms are prohibited.
13. Dumping or storage of trash, garbage, junk, toxic chemicals, toxic substances, hazardous waste, or similar offensive or toxic materials on site is prohibited.
14. All farming and ranching activities will be prohibited after the original Grantors, LuBertus Vanderbilt and Mary Vanderbilt, are dead.
15. Any new development, ditching, and diversion of natural streams, springs, or water courses are prohibited.
16. The keeping of more than two dogs and two cats is prohibited. This restriction is needed to prevent dogs and cats from harassing and stressing the wildlife on the property.
17. The construction of livestock fences that do not comply with wildlife standards is prohibited (Exception: see the exception for the small gardens in the reserved rights). This restriction is needed to prevent migration problems for the elk and deer on the property.

18. Recreational snowmobiling and racing on the property are prohibited. These prohibitions are needed to protect the wildlife from stress when they are most vulnerable (Exception: see the exception in the reserved rights. Snowmobiles may be used for winter access purpose for the homeowners and for persons with handicaps).

SECTION 5

BUILDING CONSTRUCTION STANDARDS

1. Building envelope for the main house, barns and outbuildings – The building envelope is defined as the south half southeast quarter of the northwest quarter of the southwest quarter of Section 2, Township 51 North, Range 3 West of the Boise Meridian.
2. Building envelope for the storage units – The building envelope is defined as the southwest quarter of the southwest quarter of the northeast quarter of the southwest quarter of Section 2, Township 51 North, Range 3 West of the Boise Meridian. No more than 20 storage units are permitted.
3. Any disturbed areas within the building envelope shall be reseeded with natural grasses or other natural plants. Noxious weeds shall be controlled in the building envelope.
4. To protect the natural forest, the cutting of trees and grading and compactions around trees shall be minimized so as to reduce the damage to native trees.

SECTION 6

PUBLIC EDUCATION PROGRAM

1. As authorized by section 26 C.F.R. 1.7014 and section 1709(h) of the Internal Revenue Code, the Grantors working with the Idaho State Department of Fish and Game (the Department) may create a limited public education program on the Protected Property in order to inform and teach the public and students about conservation and wildlife.
2. The specifics of the program would be determined by mutual agreement of the Grantors and the Department.
3. The Protected Property would be open for limited public access for conservation educational purposes for a period of no more than three full days each season.
4. Visitation by the public to the Protected Property is limited to small groups of no more than 25 persons.
5. By mutual agreement, the Grantors and the Department may make changes in this program as necessary to accommodate unforeseeable changes, changing environmental conditions, and other practical concerns.
6. The provisions of this section do not infer upon the Holder any management responsibilities, duties or liabilities for the public education program.

Recording requested by:

American Farmland Trust
Herrick Mill
One Short Street
Northampton, MA 01060
Attn: Director of Land Protection

DEED OF AGRICULTURAL CONSERVATION EASEMENT

THIS DEED OF AGRICULTURAL CONSERVATION EASEMENT

("Easement") granted this day of 200 , by [NAME] [and NAME, husband and wife,] [a [state]corporation] having an address at [Street, City, State, Zip Code] ([collectively,] "Grantor"), to AMERICAN FARMLAND TRUST, a District of Columbia nonprofit corporation, with a principal place of business at 1200 18th Street, NW, Suite 800, Washington, DC 20036 ("Grantee").

WITNESSETH:

Grantor is the owner of certain agricultural real property in [County], [State], comprising ____ acres, more or less, as more particularly described in Exhibit A attached hereto (the "Property").

Grantee is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the "Code"), and meets the requirements of Section 509(a)(2) of the Code. Grantee is a "qualified organization," as such term is defined in Section 170(h)(3) of the Code, and is qualified to hold conservation easements under the laws of the State of _____.

Grantor wishes to convey to Grantee, for conservation purposes, a perpetual restriction on the use which may be made of the Property.

The Property consists primarily of productive agricultural land. The majority of the soils on the Property have been classified as ["prime"/"unique"/"farmland of statewide or local importance"] by the Natural Resources Conservation Service, U.S. Department of Agriculture. The primary purpose of this Easement is to protect the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity.

The grant of this Easement will also serve the following "conservation purposes," as such term is defined in Section 170(h)(4)(A) of the Code: [select applicable purposes only]

- The preservation of open space, including farmland, where such preservation is pursuant to the following clearly delineated governmental conservation policies and will yield a significant public benefit:

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

[State] Right to Farm Law [citation];

[State] Conservation Easement Law [citation];

[State] Preferential Tax Law for Agricultural Land [citation];

[Other State laws, Executive Orders, and/or state and local conservation/growth management policies.]

- The preservation of open space where such preservation is for the scenic enjoyment of the general public from [describe highway/other public location] and will yield a significant public benefit.
- The protection of a relatively natural habitat for [describe fish, wildlife, or plants].
- The preservation of a land area of historic importance due to [describe historic importance].

The current use of the Property for agricultural production and its current improvements are consistent with the foregoing "conservation purposes," and the agricultural, [open space, scenic, natural habitat, and historic] resources of the Property are collectively referred to herein as the "Conservation Values" of the Property.

Grantor intends that the agricultural and other Conservation Values of the

Property be preserved and maintained, and Grantor intends to convey to Grantee hereby the right to preserve and protect the agricultural and other Conservation Values of the Property in perpetuity.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants, terms, conditions and restrictions contained herein, the parties agree as follows:

1. *Grant of Agricultural Conservation Easement*

Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts, a perpetual Agricultural Conservation Easement, [terminology may vary with state--consult state statute.] an immediately vested interest in real property defined by [citation to state statute] of the nature and character described herein. Grantor will neither perform, nor knowingly allow others to perform, any act on or affecting the Property that is inconsistent with the covenants contained herein. Grantor authorizes Grantee to enforce these covenants in the manner described below.

2. *Statement of Purpose*

The primary purpose of this Easement is to protect the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity. No activity which shall significantly impair the actual or potential use of the Property for agricultural production shall be permitted. To the extent that the preservation and protection of the additional Conservation Values of the Property referenced above is consistent with the primary purpose of protecting the agricultural soils, agricultural viability, and agricultural productivity of the Property in perpetuity, it is also the purpose of this Easement to protect those additional Conservation Values of the Property, and to such extent, no activity which shall significantly impair those additional Conservation Values of the Property shall be permitted.

3. *Rights and Responsibilities Retained by Grantor*

Notwithstanding any provisions of this Easement to the contrary, Grantor reserves all customary rights and privileges of ownership, including the rights to sell, lease, and devise the Property, as well as any other rights consistent with the Statement of Purpose set forth in Paragraph 2 above and not specifically prohibited or limited by this Easement. Unless otherwise specified below, nothing in this Easement shall require Grantor to take any action to restore the condition of the Property after any act of God or other event over which Grantor had no control. Nothing in this Easement relieves Grantor of any obligation with respect to the Property or restriction on the use of the Property imposed by law.

4. *Right to Use Property for Agricultural Production*

Grantor retains the right to use the Property for agricultural production, or to permit others to use the Property for agricultural production, in accordance with applicable law.

ALTERNATIVE A: As used herein, "agricultural production" shall have the meaning ascribed to such term in [cite state statute, where applicable]

ALTERNATIVE B: As used herein, "agricultural production" shall mean the production, processing, storage or retail marketing of crops, livestock, and livestock products. For purposes hereof, crops, livestock and livestock products include, but are not limited to:

[Easement drafter to modify and add additional products as appropriate]

(a) crops commonly found in the community surrounding the Property;

(b) field crops, including corn, wheat, oats, rye, barley, hay, potatoes, cotton, tobacco, herbs and dry beans;

(c) fruits, including apples, peaches, grapes, cherries, nuts and berries;

(d) vegetables, including lettuce, tomatoes, snap beans, cabbage, carrots, beets, onions, mushrooms, and soybeans;

(e) horticultural specialties, including sod, seeds, nursery stock, ornamental shrubs, ornamental trees, Christmas trees and flowers;

(f) livestock and livestock products, including dairy cattle, beef cattle, sheep, swine, goats, horses, poultry, fur bearing animals, bees, milk and other dairy products, eggs and furs;

(g) timber, wood, and other wood products derived from trees; and

(h) aquatic plants and animals and their byproducts.

5. *Right to Privacy*

Grantor retains the right to privacy and the right to exclude any member of the public from trespassing on the Property.

6. *Right to Use the Property for Customary Rural Enterprises*

Grantor retains the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, processing, packaging and marketing of farm products; farm machinery repair; sawmills; and firewood distribution; provided such uses are confined to locations within the "Farmstead Area" identified on the map attached as Exhibit B or are otherwise permitted by Grantee.

7. *Right to Use the Property for Recreational Purposes*

Grantor retains the right to use the Property for otherwise lawful recreational uses, including, but not limited to, hunting, fishing, cross-country skiing, [and snowmobiling]. [Commercial recreational activities that exceed the *de minimis* standard set forth in Section 2031(c)(8)(B) of the Code are prohibited.]

8. *Permission of Grantee*

Where Grantor is required to obtain Grantee's permission or approval for a proposed action hereunder, said permission or approval (a) shall not be unreasonably delayed by Grantee, (b) shall be sought and given in writing, and (c) shall in all cases be obtained by Grantor prior to Grantor's taking the proposed action. Grantee shall grant permission or approval to Grantor only where Grantee, acting in Grantee's sole reasonable discretion and in good faith, determines that the proposed action will not substantially diminish or impair the Conservation Values of the Property. Grantee shall not be liable for any failure to grant permission or approval to Grantor hereunder.

9. *Procedure to Construct Buildings and Other Improvements*

Except as otherwise provided herein, Grantor may undertake construction, reconstruction, or other improvement of the Property only as provided below. Grantor shall advise Grantee prior to undertaking any construction, reconstruction or other improvement of single-family dwellings or recreational improvements on the Property as permitted herein, so as to enable Grantee to review the proposed activity for compliance with the terms hereof.

(a) *Fences* -- Existing fences may be repaired and replaced, and new fences may be built on the Property, for purposes of reasonable and customary management and protection of crops, livestock and wildlife.

(b) *Existing Agricultural Structures & Improvements* -- Existing agricultural structures and improvements may be repaired, reasonably enlarged and replaced at their

current locations, which are shown on Exhibit B.

(c) *New Agricultural Structures & Improvements* -- New buildings and other structures and improvements to be used primarily for agricultural production (as defined above) and not to be used for any dwelling or Farm Support Housing (as defined below) may be built on the Property within the "Farmstead Area" identified on Exhibit B. New buildings, structures or improvements proposed for locations outside the "Farmstead Area" may be built only with the permission of Grantee.

(d) *Existing Farm Support Housing* -- All existing dwellings or structures used to house farm tenants and employees, as shown on Exhibit B, may be repaired, reasonably enlarged and replaced at their current locations.

(e) *New Farm Support Housing* -- New dwellings or structures to be used primarily to house tenants or employees engaged in agricultural production on the Property ("Farm Support Housing") may be built on the Property, provided they are located within [an area not larger than , acres in size to be approved by Grantee][the area identified as "Farm Support Housing" on Exhibit B.] Farm Support Housing shall not be subdivided from the Property under any circumstances. New Farm Support Housing proposed for locations outside said area may be built only with the permission of Grantee.

(f) *Existing Single-Family Residential Dwellings* -- All existing single-family residential dwellings may be repaired, reasonably enlarged and replaced at their current locations, which are shown on Exhibit B.

[May be added in certain circumstances:] (g) *New Single-Family Residential Dwellings* -- No more than one new single-family residential dwelling, together with reasonable appurtenances such as garages and sheds, may be built on the Property. [Said dwelling and appurtenant structures shall be located in the building envelope indicated on Exhibit B.] [OR: Said dwelling shall be located where indicated on Exhibit B, and appurtenant structures shall be located no more than 250 feet from said dwelling.] Grantor may relinquish its right to construct the new residential dwelling referred to herein at any time.]

(h) *Existing Recreational Improvements* -- All existing recreational improvements may be repaired, reasonably enlarged or replaced at their current locations, which are shown on Exhibit B.

(i) *New Recreational Improvements* -- New recreational improvements may be built within the area identified as "Farmstead Area" on Exhibit B. Any new recreational improvements proposed for locations outside the area identified as

12. *Subdivision*

The Property is currently comprised of one legal parcel. Subdivision of the Property, recording of a subdivision plan, partition of the Property, or any other attempt to divide the Property into two or more legal parcels without the permission of Grantee is prohibited.

[**OR:** The Property is currently comprised of multiple legal parcels, all owned by Grantor. Unless otherwise permitted by Grantee, Grantor shall maintain all of the parcels comprising the Property, and all interests therein, under common ownership, as though a single legal parcel. Subdivision of any of said parcels, recording of a subdivision plan, partition of any of said parcels, or any other attempt to divide any of said parcels into two or more legal parcels without the permission of Grantee is prohibited.]

13. *Conservation Practices*

All agricultural operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by the U.S. Department of Agriculture, Natural Resources Conservation Service, or its successor, utilizing the standards and specifications of the Natural Resources Conservation Service field office technical guide. [**OR:** All agricultural operations on the Property shall be conducted in a manner consistent with a conservation plan prepared by a qualified conservation professional approved by Grantee.] This plan shall be updated periodically, and in any event any time the basic type of agricultural operation on the Property changes or ownership of the Property changes, and shall provide for management of the Property in a manner consistent with generally accepted "Best Management Practices," as those practices may be identified from time to time by appropriate governmental or educational institutions, and in a manner not wasteful of soil resources or detrimental to water quality or conservation. All agricultural operations shall be conducted in accordance with applicable law.

14. *Application of Waste Materials*

The land application, storage and placement on the Property of domestic septic effluent and municipal, commercial or industrial sewage sludge or liquid generated from such sources for agricultural purposes may be undertaken only if in accordance with applicable law **[if no state or local regulations regarding this practice exist, then add "and only with the prior permission of Grantee"]**, and only if a qualified professional environmental consultant certifies in writing that the application of said materials will not substantially diminish the viability and productivity of the agricultural soils on the Property.

"Farmstead Area" on Exhibit B may be built only with the permission of Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips or commercial helicopter pads be constructed on the Property.

(j) *Utility Services and Septic Systems* -- Wires, lines, pipes, cables or other facilities providing electrical, gas, water, sewer, communications, or other utility services to the improvements permitted herein may be installed, maintained, repaired, removed, relocated and replaced, and Grantor may grant easements over and under the Property for such purposes. Septic or other underground sanitary systems serving the improvements permitted herein may be installed, maintained, repaired or improved.

(k) *Ancillary Improvements* -- Other improvements, including, but not limited to, small-scale facilities for the generation and transmission of electrical power, may be built on the Property only with the permission of Grantee.

10. *Maintenance and Improvement of Water Sources*

Grantor retains and reserves the right to use, maintain, establish, construct, and improve water sources, water courses and water bodies within the Property for the uses permitted by this Easement, provided that Grantor does not materially impair the natural course of the surface water drainage or runoff flowing over the Property. Grantor may alter the natural flow of water over the Property in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural or forest management potential of the Property, provided such alteration is consistent with the conservation purposes of this Easement and is carried out in accordance with law. The construction of ponds and reservoirs shall be permitted only with the permission of Grantee.

11. *Water Rights*

The Property subject to this Easement includes all water and water rights, ditches and ditch rights, springs and spring rights, reservoir and storage rights, wells and groundwater rights, and other rights in and to the use of water historically used on or otherwise appurtenant to the Property (collectively, the "Water Rights") [including, but not limited to, those more particularly described on Exhibit C annexed hereto.]

Grantor shall not transfer, encumber, sell, lease or otherwise separate the Water rights for the Property or change the historic use of the Water Rights without the consent of Grantee. Grantor shall not abandon or allow the abandonment of, by action or inaction, any of the Water Rights without the consent of Grantee.

the bill, statement or estimate.] If Grantee is ever required [or elects] to pay any taxes or assessments on its interest in the Property, Grantor will reimburse Grantee for the same.

(b) *Upkeep and Maintenance* -- Grantor shall be solely responsible for the upkeep and maintenance of the Property, to the extent required by law. Grantee shall have no obligation for the upkeep or maintenance of the Property.

(c) *Liability and Indemnification* -- Grantor shall indemnify Grantee against, and hold Grantee harmless from, any and all loss, cost, claim, liability, or expense (including reasonable attorneys' fees) arising from or with respect to the Property, unless due to the gross negligence or willful misconduct of Grantee. Grantor shall keep the Property insured with comprehensive general liability insurance against claims for personal injury, death and property damage, cause Grantee to be named as an additional insured party on all such insurance policies, and provide evidence of such insurance to Grantee promptly upon request.

20. *Extinguishment of Development Rights*

Except as otherwise reserved to Grantor in this Easement, all development rights appurtenant to the Property are hereby released, terminated and extinguished, and may not be used on or transferred to any portion of the Property as it now or hereafter 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.

21. *Baseline Documentation*

The Conservation Values of the Property and its current use and state of improvement are described in a Present Condition Report (the "Report") prepared by Grantee with the cooperation of Grantor. Grantor and Grantee have copies of the Report, and acknowledge that the Report is accurate as of the date of this Easement. The Report may be used by Grantee to establish that a change in the use or character of the Property has occurred, but its existence shall not preclude the use by Grantee of other evidence to establish the condition of the Property as of the date of this Easement.

22. *Enforcement*

Grantee shall have the right to enter upon the Property upon reasonable advance notice to Grantor for the purpose of inspecting for compliance with the terms of this Easement. If Grantee determines that a violation of this Easement has occurred, Grantee shall so notify Grantor, giving Grantor thirty (30) days to cure the violation.

Notwithstanding the foregoing, where Grantee in Grantee's sole discretion determines that an ongoing or threatened violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee may bring an action to enjoin the violation, *ex parte* if necessary, through temporary or permanent injunction.

In addition to injunctive relief, Grantee shall be entitled to seek the following remedies in the event of a violation:

(a) money damages, including damages for the loss of the Conservation Values protected by this Easement; and

(b) restoration of the Property to its condition existing prior to such violation, including the removal of offending structures;

Said remedies shall be cumulative and shall be in addition to all remedies now or hereafter existing at law or in equity. In any case where a court finds that a violation has occurred, Grantor shall reimburse Grantee for all its expenses incurred in preventing, stopping and correcting the violation, including, but not limited to, reasonable attorneys' fees. The failure of Grantee to discover a violation or to take immediate legal action shall not bar Grantee from doing so at a later time. In any case where a court finds no violation has occurred, each party shall bear its own costs.

23. *Transfer of Easement*

Grantee shall have the right to transfer this Easement to any private nonprofit organization or public agency that, at the time of transfer, is a "qualified organization" under Section 170(h) of the Code and under [applicable state Easement enabling statute], provided the transferee expressly agrees to assume the responsibility imposed on Grantee by this Easement. If Grantee ever ceases to exist or no longer qualifies under Section 170(h) of the Code, or applicable state law, a court of competent jurisdiction shall transfer this Easement to another qualified organization having similar purposes that agrees to assume the responsibilities imposed by this Easement.

24. *Transfer of Property*

Grantor agrees to incorporate by reference the terms of this Easement in any deed or other legal instrument by which it transfers or divests itself of any interest, including, without limitation, a leasehold interest, in all or a portion of the Property. Grantor shall notify Grantee in writing at least thirty (30) days before conveying the Property, or any part thereof or interest therein, to any third party. Failure of Grantor to do so shall not impair the validity of this Easement or limit its enforceability in any

Interested in More Information about Conservation Easements?

- Purchase the Conservation Easement Handbook.
 - Published and sold by the Land Trust Alliance and the Trust for Public Land.
 - It is a detailed guide for establishing and maintaining a conservation easement program, and also provides technical guidelines for drafting conservation easements.
 - [The Conservation Easement Handbook - Trust for Public Land \(tpl.org\)](http://www.tpl.org)
- Visit the IRS's website on abusive transactions and treatment of conservation easements.
 - <https://www.irs.gov/charities-non-profits/conservation-easements>
 - See also Notice 2007-50 Guidance Regarding Deductions by Individuals for Qualified Conservation Contributions
- Visit the National Conservation Easement Database.
 - <https://www.conservationeasement.us/>
- Reach out to a land trust organization in the subject area.
 - <https://www.idaholandtrusts.org/conservation-easements>

An Additional Option: Government Managed Conservation Programs

- The United States Department of Agriculture (USDA) Farm Service Agency (FSA) oversees a number of voluntary conservation-related programs that work to address farming and ranching related conservation issues including:
 - Drinking water protection,
 - Reducing soil erosion,
 - Wildlife habitat preservation,
 - Preservation and restoration of forests and wetlands, and
 - Aiding farmers whose farms are damaged by natural disasters.
- These programs include the Conservation Reserve Program, Conservation Reserve Enhancement Program, Emergency Conservation Program, Emergency Forest Restoration Program, Farmable Wetlands Program, Grassland Conservation Reserve Program, and the Source Water Protection Program.

Government Managed Conservation Programs - CRP

- Conservation Reserve Program (CRP)
 - The CRP provides a yearly rental payment to farmers who remove environmentally sensitive land from agricultural production and plant species that will improve environmental health and quality.
 - Contracts for land enrolled in CRP range from 10-15 years in length.
 - The FSA administers the program and the Natural Resource Conservation Service (NRCS) assist with technical assistance through conservation planning.
 - Signed into law by President Ronald Reagan in 1985, CRP is one of the largest private lands conservation programs in the United States.
 - The CRP is designed and managed with the intent to encourage more land enrollment, implement science based program changes, and enable producers to plan and implement conservation practices that are appropriate for their needs.

Government Managed Conservation Programs – CREP

- Conservation Reserve Enhancement Program (CREP)
 - This program is a component of CRP and allows states, tribal governments, non-profit, and private entities to partner with FSA to implement CRP practices that address high priority conservation and environmental objectives.
 - FSA encourages CREP agreements to target multiple resource concerns and conservation objectives.
- Statutory Requirements
 - All CREPs have statutory requirements, a few being: eligible land must have cropping history for four out of the past six years, producers receive a 32.5 percent sign-up incentive payment at the time of sign up, per practice cost share from the USDA, annual limitation of \$50,000 per producer, and CRP involvement is limited to no more than 25% of the total cropland in a county.

Government Managed Conservation Programs – Grassland CRP

- Grassland CRP
 - This is a federally funded voluntary working lands program. Through this program, the FSA provides annual rental payments to landowners to maintain and conserve grasslands while allowing producers to graze, hay, and produce seed on land.
 - The intent is to provide benefits to encourage producers to assist in reducing erosion, providing wildlife habitat and migration corridors, and capturing and maintaining carbon in the soil and cover.
 - The annual rent varies by county based upon local rates and practices, with a national minimum rental rate of \$13 per acre.

Government Managed Conservation Programs – Sign Up

- Sign-up and Ranking
 - Interested producers must sign up for consideration and are graded on a ranking system.
 - Different points are allotted for factors, such as current and future use, beginning, socially disadvantaged, veterans, maximizing grassland preservation, environmental factors, and vegetative cover etc.

Government Conservation Programs – What's the Takeaway?

- Be aware that Congress periodically changes the rules (and funding) in these programs.
- Be aware that FSA and NRCS periodically update their rules and requirements.
- Be aware the FSA and NRCS work together, and sometimes individually, on different programs.
- These programs are designed to encourage voluntary conservation, but they come with strings. Producers must comply with NRCS management rules, including conservation obligations, or they will be withdrawn from the program and obligated to pay back funds already paid.
- Your local NRCS/FSA office is usually the first place to start when a producer/client is considering a conservation program. Local offices are obligated to keep up to date on the rules and requirements, and will be able to walk a producer/client through their options, advise of available funding, and likelihood of obtaining funding.
- While the local NRCS/FSA is (normally) very helpful, our job to our clients should be to provide information about options that best fits their needs with their business and property.

Government Managed Conservation Programs – Interested in Learning More?

- Check out the USDA's website.
- <https://www.fsa.usda.gov/programs-and-services/conservation-programs/index>
- <https://www.nrcs.usda.gov/conservation-basics/conservation-by-state/idaho>
- <https://www.nrcs.usda.gov/programs-initiatives/acep-agricultural-conservation-easement-program/idaho/agricultural-land>

Any Questions?

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