

# California Rangeland Trust Agricultural Easement Narrative

## An Overview of the Document and its Key Provisions

### *What is a Conservation Easement?*

Conservation easements are being used by ranchers and farmers throughout California to protect their ranches and farms. Some confusion remains about what a conservation easement really is. In recognition of this uncertainty, the California Rangeland Trust has prepared this document to help landowners better understand the various aspects of a conservation easement in general, and our standard easement in particular.

At its core, a conservation easement is a voluntary agreement between a landowner and a qualified land trust, conservation group or government agency regarding the future uses of private property. The conservation easement is recorded and becomes part of the deed to the property. Our conservation easements are tailored to fit a landowner's individual situation, and the terms of the easement are established only after detailed discussions between the landowner and the Rangeland Trust.

**Landowners continue to have complete control over public access to their property after the completion of a conservation easement.**

Through an agricultural conservation easement, landowners can protect their property to ensure that future generations have continued opportunities to ranch. At the same time, agricultural conservation easements contribute to maintaining the viability of a region's agriculture, sustain biological resources within the ranch, provide watershed protection and vistas of working landscapes for the enjoyment of the public. The donation of a conservation easement to the Rangeland Trust may significantly reduce federal and state income, estate and inheritance taxes. The sale of a conservation easement to the Rangeland Trust may provide a ranching operation with a much-needed influx of capital to pay down outstanding debt or to reinvest in the ranch.

### *How is a Conservation Easement Created?*

Establishing an agricultural conservation easement is a straightforward process, and the Rangeland Trust has the expertise to guide you through the steps. While the Rangeland Trust requires that you seek your own legal and tax advice, we will work with you and your tax and legal advisors to create the legal document. We will help you complete a baseline inventory of your property to record the agricultural, scenic, historical and wildlife values that the easement seeks to protect. If your easement will be purchased by the Rangeland Trust, one of the first steps we take is to evaluate funding options to provide you with a realistic picture of funding opportunities. If this looks promising, you will next need to have an appraisal completed to establish the value of the easement. Since an easement affects the value of your ranch, we will also help you secure the cooperation of any lenders. Finally, the Rangeland Trust will work with you to create a monitoring endowment to ensure that the easement is protected over time. After these steps are completed, the deed of easement will be signed by both parties, notarized, and recorded with the County Clerk and Recorder. The Rangeland Trust intends to hold easements in perpetuity.

## ***This Narrative***

An important purpose of this narrative is to provide an introduction to the issues a landowner should discuss with the Rangeland Trust when creating the agricultural conservation easement agreement. As a landowner, you should view the following issues as a starting point for creating an easement and, if necessary, be prepared to add other points, issues or ideas. **Your easement should reflect your personal needs. In most cases, the Rangeland Trust will incorporate your concerns as long as they are consistent with our policies, applicable state and federal laws and tax regulations. The Rangeland Trust's easements must work to sustain agriculture.**

This narrative was written as an accompaniment to the Rangeland Trust's Deed of Agricultural Conservation Easement and Voluntary Agreement Creating Enforceable Restrictions in Perpetuity. Numbered paragraphs correspond to paragraphs in the Rangeland Trust's Standard Easement.

An initial comment on the name of the agreement. The purpose of the long name is to alert any future buyers of your ranch that the use of the ranch is limited to agriculture. You've made the decision to maintain the agricultural character of your property forever. Our job is to ensure your intentions are fulfilled.

## ***The Agreement***

**Recitals.** These paragraphs are background information to the conservation easement. They identify the parties, the property and the policies supported by the easement. Most importantly, the Conservation Values are defined here. The definition of Conservation Values may change depending on the particulars of each specific property, the type of funding, the purpose of the donation, etc. Only those values identified on a ranch should be included in this definition. The ranch as it exists today, will be described in writing, maps and photographs in a baseline report, so the Rangeland Trust and future owners will always know what existed and how the ranch looked when the easement agreement began.

**Purposes – 1.** The purpose of a conservation easement is to protect the Conservation Values from impairment. The Rangeland Trust easement includes a definition of "impairment" to ensure that only a material adverse change is an impairment. The magnitude and duration of the change must also be considered.

**Prohibited Acts – 2.** The landowner and the Rangeland Trust will spend much of their time discussing the restricted uses of the property. 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 give up some of those rights, and the rights you retain are limited in part by the protection of the Conservation Values.

**Restrictions on Use.** The following list describes some of the typical restrictions landowners agree to in order to receive the benefits of a conservation easement.

**Incidental Ranch Facilities; Stock Ponds – 3(a).** The easement permits the construction of incidental ranch facilities, such as fences, loading chutes, and water facilities, provided they support the agricultural activities allowed by the easement. Stock ponds may also be constructed.

**Non-Residential Buildings, Structures – 3(b).** Any existing non-residential buildings and facilities may be enlarged up to 50% without permission from Rangeland Trust. Greater enlargement or construction of new buildings or facilities requires permission from Rangeland Trust, which is discretionary.

**Residential Dwellings - 3(c).** The construction of residential buildings is typically restricted to predetermined numbers designated in the easement, and may be limited to a specific area of the ranch. The repair, replacement and reasonable enlargement of existing residences may be completed at the landowner's discretion.

**Ranch Labor Housing - 3(d).** Existing dwellings used to house ranch workers can be repaired, replaced or reasonably enlarged without further permission from the Rangeland Trust. New dwellings or structures can be built with written permission from the Rangeland Trust, which is discretionary.

**Subdivision – 4.** Subdivision of the property is generally prohibited. This ensures the ranch will remain forever in the same configuration.

**Mining – 7.** The extraction of soil, sand, gravel or other mineral substances by surface mining is prohibited by federal tax rules. Exposed sand, rock and gravel may be removed and used on the property. If the surface mineral rights have been severed from the title to the property, the IRS requires that a geologist certify that the likelihood of mineral recovery is so minimal as to be negligible. This is one area where it is critical for a landowner to obtain sound legal advice.

**Timber Cutting – 8.** The easement restricts the cutting of trees to disease and insect control, property protection, domestic firewood, and fence material. Under some circumstances, we can revise this paragraph to allow the landowner and the Rangeland Trust to work out a reasonable plan for how to handle the cutting of trees on the property.

**Paving and Road Construction – 9.** This provision is designed to avoid any future confusion about where a road may be located and what may be done to existing roads. Applying gravel to existing or future roads is allowed.

**Agricultural Intensification – 10.** This provision outlines when intensification of agricultural operations on the property is and is not permitted within the easement property.

**Industrial, Non Agricultural Commercial and Recreational Uses – 12.** Industrial and most non-agricultural commercial uses are prohibited. Hunting, fishing, hiking, wildlife viewing and photography are specifically allowed.

**Water rights – 14.** The landowner retains water rights, because of their importance for maintaining the agricultural use of the property. Some temporary water transfers may be allowed.

**Responsibilities of Landowner and Rangeland Trust Not Affected – 16.** The conservation easement does not alter any existing obligation of the landowner or the Rangeland Trust unless specifically mentioned. The landowner is still responsible for paying property taxes and providing liability insurance that covers the Rangeland Trust for any claims from bodily injury or property damage (unless caused by the Rangeland Trust).

**Monitoring, Easement Area Management and Issue Resolution – 17.** The largest responsibility of the organization that accepts a conservation easement is to make sure the landowner is following the terms of the easement. The Rangeland Trust monitors the easements it holds by inspecting the property, usually on an annual basis. If we discover that the terms of the easement are not being followed, notice is given to the landowner to correct the problem. If the problem is still not corrected, this provision outlines the process that the Rangeland Trust will use to resolve the issue. The Rangeland Trust's monitoring will not interfere with normal agricultural operations.

**Rangeland Trust Transfer of the Easement – 19. The Rangeland Trust intends to hold its easements in perpetuity.** In the unlikely event that the Rangeland Trust ceases to exist, provision is made to transfer the easement to another qualified organization with an agricultural conservation purpose. The landowner will have an opportunity to participate in the discussion of such a transfer.

**Landowner Transfer of the Easement Area – 20.** Landowners are completely free to sell, mortgage, or otherwise transfer their ownership interest in the property. The conservation easement, however, will stay on the property and restrict future owners. The Rangeland Trust requires written notice and a small fee be paid before the property is transferred to maintain the accuracy of our records and cover our costs of informing the new landowner about the easement and establishing a positive relationship with that new owner.

**Amendment of the Easement – 21.** The agricultural conservation easement can be amended with the written consent of both parties as long as the amendment is consistent with the provisions that established the original easement. The amendment must also be recorded in the real property records of the local county.

**No Public Dedication or Public Access – 22.** Granting a conservation easement does not give the public the right to enter the property. The land remains private. The landowner controls who comes onto the property.

**Perpetual Duration – 27.** To receive the potential tax benefits of a conservation easement, the Internal Revenue Service requires that the easement be of perpetual duration. **In other words, every provision of the easement will apply to the land forever and will bind agents, heirs, executors, administrators and all other successors.**

**Condemnation – 29.** A conservation easement does not prevent condemnation by a governmental entity. This provision explains how the condemnation proceeds are distributed if such an event occurs.

### ***Easement Negotiation***

To ensure that all requested revisions to this standard easement are considered, the Rangeland Trust prefers that landowners make redline changes or handwritten notes in the margins of the easement. We can provide a paper or an electronic copy of our easement, or you can download it from our website at [www.rangelandtrust.org](http://www.rangelandtrust.org).

Like any real estate transaction, a conservation easement has a number of costs associated with it. These costs typically include the following:

1. Appraisal of easement value;
2. Title insurance and recording fees;
3. Baseline conditions report;
4. Geologist's report (if the mineral rights are held by a third party);
5. Environmental assessment;
6. Land survey (rarely required);
7. Monitoring endowment (a fund set up to support the perpetual monitoring of the easement); and
8. Landowner legal and tax planning costs.
9. A donation to the Rangeland Trust to assure our continued support of rangeland agriculture.

**The landowner is responsible for paying the costs associated with a conservation easement transaction.** The Rangeland Trust can develop a budget specific to your transaction. Occasionally, the Rangeland Trust obtains private foundation grant funds to pay a portion of the costs. Most public funding agencies do not pay any portion of the costs.

### ***Conclusion***

**As long as the tax rules, state regulations, county ordinances and purposes of the easement are closely followed, a landowner and the Rangeland Trust can create an easement that satisfies the needs of both parties.** A landowner should read the easement carefully and be certain of all of its terms. The easement is the agreement that will govern the relationship between the landowner and the Rangeland Trust for the future.

This narrative provides a general explanation of how the Rangeland Trust's Standard Agricultural Conservation Easement works. A conservation easement on your property will be governed by the specific provisions of that legal document and may be different from those we have described. When it is time to work on these specific provisions, **the Rangeland Trust requires that you seek individual legal and tax advice.**

The California Rangeland Trust appreciates your interest in preserving California's working landscapes. Please call our staff with any questions you may have at 916/444-2096 or direct your inquiries to the California Rangeland Trust, 1221 H Street, Sacramento, California 95814.