

Sample Language for Water Resources Protection

CONSERVATION PURPOSE LANGUAGE

WHEREAS, the Property contains significant water resources, including forested and vegetated riparian land along _____ Creek;

WHEREAS, the Property provides important natural land within the local watershed, and its preservation contributes to the quality and quantity of surface runoff to the _____ watershed. Protection of the Property in its natural and open space condition helps to ensure the quality and quantity of water recharge resources for the local area;

WHEREAS, Grantor and Grantee recognize that the Property's scenic open space values are enhanced by the fact that the wetlands portions of the Property have not been significantly disturbed by human activities;

WHEREAS, the Property provides vital corridor wetlands and upland wildlife habitats which serve as a connection for wildlife movement and create a natural "greenway;"

WHEREAS, the Property contains significant natural habitat in which wetlands, wildlife, plants, trees, and the ecosystems which support them, thrive in a natural state,

WHEREAS, the Property contains natural wetland areas that provide habitat for aquatic invertebrates, reptiles, amphibians, and aquatic and/or emergent vegetation,

WHEREAS, the conservation of the Property is pursuant to clearly delineated local [and/or state] conservation policy and yields a significant public benefit. The following legislation, among others, establishes relevant state public policy:

- *Citation of State Code when found*

RESTRICTIVE LANGUAGE

Riparian Buffer Area. In order to protect the ecological integrity and water quality of the water resources, **Grantors** agree to maintain a forested, vegetated Riparian Buffer which shall contain the land extending 100 feet [*or negotiated width*] feet from the bank of _____ [*waterbody*], and from all other permanent and intermittent streams, wetlands, mudflats, and water bodies on or adjacent to the Property, including manmade ditches and ponds, as measured from the edge of the stream or feature under normal conditions (mean high water in tidal environments); and additional designated areas of the Property with special conservation significance. The extent and location of

Buffer Areas are shown on Map ___ in Exhibit ___ and are described and depicted graphically in the Baseline Report.

In the Riparian Buffer there shall be no construction or placement of structures or disturbance of vegetation except as may be necessary for: (1) streambank restoration, riparian restoration or maintenance of existing restored riparian buffer, cattle fencing, or erosion control; (2) cutting and removal of dead, disease infested or invasive species or to remove trees blocking the flow of water; (3) to allow for reasonable crossing to access the remainder of the Property. The Riparian Buffer shall be protected from degradation by livestock.

The Riparian Buffer shall be preserved in perpetuity in its natural state. Construction of buildings is prohibited; however, by way of example and not limitations, structures such as boardwalks, foot trails, wildlife management structures, observation decks, and picnic tables may be constructed with the advance written consent of, and according to designs approved by, the Grantor and Grantee, which consent shall not be unreasonably withheld.

In order to maintain the ecological values of the Riparian Forest Buffer, indigenous vegetation shall be maintained [*option*: “preserved, or allowed to develop by natural succession where it does not exist”] to the maximum extent possible. The target vegetative cover in said buffer shall consist of an indigenous riparian forest community composed of herbaceous, shrub, and tree canopy layers expected on such sites.

The Grantor may remove vegetation to control insect and disease infestations, to prevent personal injury and property damage, and to control the spread of invasive exotic species. Fallen trees that are blocking stream channels, or trees with undermined root systems in imminent danger of falling, may be removed where streambank erosion is a current or potential problem that outweighs any positive effects the fallen tree or trees may have on the stream ecosystem. Before removing vegetation, the Grantor shall confer with Grantee to agree on the extent and method of vegetation removal.

Neither Grantor nor Grantor’s successors shall deposit or allow to accumulate any trash or refuse in the Riparian Buffer. It is understood that poor management practices in the rest of the watershed inevitably results in the deposit of trash in the riparian zone by floodwaters, and the Grantor shall be under no affirmative obligation to continually remove such debris.

Other than as shown on the referenced plat, there shall be no vehicular crossing of the Riparian Buffer. No livestock or other crossing shall be constructed across the Riparian Buffer without the prior approval of Grantee as to location, design and construction, and such crossing shall be maintained according to standards established by Grantee.

Water Use. Grantor retains the right to use, maintain, and improve water sources, water courses, and water bodies on the Property so long as that activity does not impair the water quality in violation of applicable Virginia water quality standards or alter the natural course or flow volume of water over or through the Property, provided that alteration of the natural flow of water over the Property is permitted in order to improve drainage of agricultural soils, reduce soil erosion, or improve the agricultural potential of the Property, if such alteration is consistent with the Conservation Plan. Any exercise of this retained right must be done in a manner consistent with the conservation purposes of this Conservation Easement, including the protection of prime and unique soils and the protection of floodplains and jurisdictional wetlands.

Water Courses, Ground Water. Natural water courses, wetlands, or other bodies of water may not be altered. In addition, water from ground or surface sources may not be diverted. Measures necessary for erosion control may be taken provided that the proposed actions have been properly reviewed and authorized by Grantee for appropriateness, and so long as the actions taken are supervised by Grantee to minimize damage to the Property.

Ponds. Any ponds constructed shall be for agricultural or small-scale recreational purposes only, shall not exceed two acres in size, and shall be located in areas so that disturbance to prime, unique, and important soils is minimized.

Shoreline Stabilization. There shall be no hardening of shorelines, including but not limited to jetties, groins, bulkheads, etc. If such features exist as of the date of this Conservation Easement and are detailed in the Baseline Report as such, Grantor shall have the right to maintain or repair these features, but may not enlarge them. In addition, beaches shall not be supplemented with sand. Grantor must allow beaches to undergo a natural process of sediment erosion and accretion.

Prohibited Actions. Any activity on, or use of, the Property which is inconsistent with or detrimental to the Purposes of this Conservation Easement is expressly prohibited. By way of example, but not by way of limitation, the following activities and uses are expressly prohibited:

Ecological Restoration Activities. If Grantee reasonably determines that such activities are consistent with the purposes of this Easement, Grantee may, subject in any event to Grantor's prior written consent, not to be unreasonably withheld, engage, and permit others to engage, in restoration activities, pertaining to, without limitation, wetlands, stream banks, riparian areas, invasive plant infestations, or fire regime. Prior to commencement of any restoration activities, Grantee shall have the plans and specifications for such restoration approved by, and shall obtain all permits necessary for engaging in such activities from, all local, state and federal authorities with jurisdiction over such activities.

Sample Text for Fisheries management

Public Access to Riparian Corridor. The Grantor agrees to allow public access to _____ (the “Waterway”) and its banks for recreational fishing and boating, to preserve vegetative cover in a riparian buffer so as to protect water quality and riparian habitat, and to allow the holder to provide sites for fishery and habitat management, research and educational programs. The easement granted to Holder includes the rights described below in this Section.

- a. Public Access. Subject to Access Restrictions, public use of the Riparian Corridor for recreational fishing and boating together with accessory use of any Accessory Facilities (defined below in this Section) identified for public use by the Holder. The term “Access Restrictions” means the rules, regulations and/or limitations established by Holder to regulate fishing and boating activities.
- b. Management Activities. Use of the Easement Area by or under the auspices of the Holder for stocking fish, improving stream habitat, stabilizing stream banks and other educational, scientific and resource management activities in furtherance of the Conservation Purpose.
- c. Accessory Facilities. Installation, construction, maintenance, repair and replacement of Accessory Facilities either within the Riparian Corridor or, if outside the Riparian Corridor, in the locations identified on the Easement Plan or such other locations as are mutually agreeable to Grantor and Holder. The phrase “Accessory Facilities” means temporary or permanent structures and improvements used or usable in connection with Easement Objectives; for example, a driveway, trail, footpath, boardwalk or other access way connecting the Riparian Corridor with the public right-of-way; parking area; dock, boat launch, structures that enhance fishing opportunities or fish habitat, and signage to mark the Easement Area and provide information regarding applicable time, place and manner restrictions.
- d. Access. Reasonable means of access (both vehicular and pedestrian) to and from the public right-of-way for the purposes described in (b) and (c) above. As to the public use described in (a) above, access to the Riparian Corridor is via the Waterway unless and to the extent (i) the Riparian Corridor is accessible directly from the public right-of-way; or (ii) a footpath, trail or drive providing access to the Riparian Corridor has been identified by Holder on the Easement Plan for public use purposes.

Activities Prohibited in the Riparian Corridor. Grantor’s reserved rights to use the Easement Area are subject to the following limitations unless specifically listed as a “Permitted Use” or Holder (without any obligation to do so) notifies Grantor of its approval:

- a. Alterations to Waterway. No removal, impoundment or diversion of water from the Waterway or other change of natural flow of the Waterway is permitted.

b. Alterations to Riparian Corridor. No change in topography or removal or disturbance of soil, rock or vegetative resources that, individually or in the aggregate, results in the impairment of Easement Objectives is permitted within the Riparian Corridor; however, Grantor may cut trees or otherwise disturb resources to the extent reasonably prudent to remove or mitigate against an unreasonable risk of harm to persons or property on or about the Easement Area. By exercising such right Grantor does not assume any responsibility to inspect the Easement Area or otherwise take responsibility for the safety of any persons entering the Easement Area.

c. Improvements. No permanent structures or improvements are permitted within the Easement Area other than improvements existing on the Agreement Date in their existing locations as shown on the Easement Plan.

d. Agricultural Use. No pasturing, grazing or other agricultural use, or forestry use, of the Riparian Corridor is permitted. Any such uses within other portions of the Easement Area are conducted at Grantor's risk; i.e., Holder is not responsible for loss or damage to crops or livestock occasioned by exercise of its rights under this Agreement.

e. Waste Disposal. No dumping or placement of ashes, trash, garbage, sewage, manure or other offensive material is permitted within the Easement Area.

f. Charge. No charge or fee is permitted for access to the Easement Area for fishing, boating and other water-related activities or uses or for use of any Accessory Facilities.

Grantor's Enforcement Rights in Riparian Corridor. Grantor reserves the right to take any action permitted under law to remove from the Property persons entering the Easement Area for purposes other than set forth in the grant of public access under this Article.