

Sample CE Language:

**Reserved building envelope:**

- A. **Building Site Area.** A small cabin may be constructed on the Protected Property within the “Building Site Area” which is legally described in the Baseline Documentation Report. The Building Site Area is generally located and depicted on **Exhibit B** and more fully described in the Baseline Documentation Report. The total cumulative footprint of the cabin may not exceed 400 square feet. Footprint means the total ground area covered by the structures calculated on the basis of the exterior dimensions of any perimeter walls (whether at or above ground level) and including any balconies, carports or breezeways, patios or terraces, decks, and porches.

The cabin is not intended for year-round residential use. No utilities or driveways may be installed to service the cabin without the prior approval of the Land Trust under the provisions of section 6.6 of this Easement. Said cabin may be constructed, used, maintained, repaired, improved, and replaced in this location provided it is conducted in a manner that does not impair or interfere with the natural habitat or water quality of the Protected Property.

The location of the Building Site Area was chosen because it provides control over permitted development near the pond in order to protect the Conservation Values.

- B. **(4.1.1) Reserved Development Zone.** Owner has reserved a Development Zone of up to five (5) acres, as shown in Exhibit B. Prior to exercising any reserved rights to construct or install structures or improvements of any kind allowed by this Section 4 in the Reserved Development Zone, Owner shall obtain the Trust’s approval of a survey, site plan, plat map, GPS measurement, or description and depiction of the Reserved Development Zone that provides empirical, replicable data on its location. Upon the Trust’s approval, Owner shall mark the boundaries of the Reserved Development Zone with clearly visible and durable markers such as fence posts and shall provide the Trust with an acknowledged addendum to the Baseline Report that reflects the location, boundaries, and marking of the Reserved Development Zone.

(4.1.2) By exercising its right to use the Reserved Development Zone as described in Section 4.1.1, Owner releases any right to or associated with other Reserved Development Zones.

(4.1.3) Upon the Trust’s approval and Owner’s marking of the Reserved Development Zone as described in Section 4.1.1, all uses and activities allowed in the Development Zone under the terms of this Easement shall be allowed in the Reserved Development Zone under the same terms that apply to the Development Zone, except that all limitations on the number and size of residential dwellings provided in Section 4.5 shall remain and there shall be no increase in the number of allowed residential dwellings due to approval and use of the Reserved Development Zone.

**Existing or Permitted Residential and Recreational Structures:**

- A. **(I) Residential Dwellings.** All of the existing and reserved residential dwellings (the “Residential Dwellings”) associated with the Property are described below. The Residential Dwellings are, or shall be, all located within the Building Envelopes and may be used for residential occupancy as described below. No other structures on the Property, aside from the Residential Dwellings, may be used for residential occupancy.

(1) **Single-Family Residential Dwellings.** There are [\_\_\_\_\_] existing single-family residential dwellings on the Property. **[Describe how many and where they are located.]** Not more than [\_\_\_\_\_] new single-family residential dwellings may be built on the Property within the Building Envelope. The existing or permitted single-family residential dwelling(s) may be enlarged to a maximum of **X** square feet of living area **[each]**, excluding porches, garages, and decks. Structures associated with the use of the Residential Dwellings, such as garages, sheds, and other similar minor outbuildings, may be constructed within the Building Envelope. **[Where there are no existing or new single-family dwellings permitted, substitute the following for subparagraph B(1): There are no existing single-family residential dwellings on the Property. No new residential dwellings are permitted.]**

**[If there are seasonal dwellings, or Grantor wants to reserve the right to construct one or more seasonal dwellings, add the following sub-paragraph and adjust language to address whether dwellings are existing, reserved, or both]**

(2) **Seasonal Residential Dwellings.** One (1) new seasonal residential dwelling (the “Seasonal Dwelling”) may be built on the Property within the \_\_\_\_\_ Building Envelope depicted and described on Exhibit C. For purposes of this Easement, a Seasonal Dwelling may be a rustic cabin, yurt, wall tent, or similar structure. The Seasonal Dwelling may not exceed 1,000 square feet of total living area, excluding porches and decks. The Seasonal Dwelling shall not be connected to any commercial or public utilities, unless located within the \_\_\_\_\_ Building Envelope. The Seasonal Dwelling may be served with an onsite wastewater treatment system, such as a porta-potty, vault toilet, or an associated outhouse (“OWTS”), located within the Building Envelope or the Seasonal Dwelling Envelope, as the case may be, in which the Seasonal Dwelling is located. The Seasonal Dwelling is intended for seasonal use and shall not be used for permanent residential occupancy. Bed and breakfasts or commercial overnight occupancy operated within the Seasonal Dwelling(s) is permitted in compliance with Paragraph 18 (Commercial Uses) provided that the Seasonal Dwelling is served with an OWTS.

- B. **(II) Repair and Replacement.** Only the Residential Dwellings described in subparagraph 4.B (Residential Dwellings) and their associated outbuildings may be repaired, enlarged up to the size limit described in subparagraph 4.B, and replaced at their permitted location without further permission from Grantee. Residential Dwellings may also be relocated anywhere within the boundaries of the Building Envelope per the terms of subparagraph 4.B above. Prior to any such relocation of a Residential Dwelling, Grantor shall notify Grantee of such relocation and provide Grantee with written plans describing the relocation

so that Grantee can update its records. **[Delete this paragraph if there are no existing or new residential buildings permitted.]**

C. **(III) Recreational Structures and Improvements.** Golf courses, racetracks, commercial shooting ranges, campgrounds, and improved airstrips are strictly prohibited on the Property. Improved helicopter pads are strictly prohibited on the Property unless located within the Building Envelope **[ADJUST FOR NUMBER OF BUILDING ENVELOPES]**. Grantor may construct minor recreational structures and improvements, including improved recreational trails, anywhere on the Property after providing written notice of and description of said construction to Grantee prior to the commencement of construction and receiving written approval from Grantee. Improved recreational trails may include improvements such as man-made technical features, pervious surfacing, water bars, culverts, and other features designed to prevent erosion and minimize dust as long as improved trail base does not exceed four (4) feet in width, and shall be for non-motorized uses except as otherwise permitted by this Deed. Trails may be rerouted to better fit the topography after notice to and approval of Grantee. Minor recreational structures and improvements may be constructed within the Building Envelope. Hunting blinds are permitted to be constructed anywhere on the Property. Any recreational structures and improvements shall not substantially diminish or impair the Conservation Values and shall be consistent with the uses permitted in this Deed.

D. **(X) Structures.** Placement, construction, installation, [reconstruction,] or expansion of any structures, buildings, additional roads or access routes not shown in the Baseline Report, or other improvement of any kind (including, without limitation, fences, parking lots, billboards, mobile homes, wineries, wine caves, and towers) [outside the Development Zone] is prohibited, except as expressly permitted, including any requirement for notice or approval, in this Section. A structure is anything constructed or erected, the use of which requires permanent location on the ground or attachment to something having a permanent location on or under the ground.

E. **(Y) Residential Uses [alternative provisions]**

(1) **[Existing Single-Family Residential Dwelling.** Owner may maintain, repair, reasonably enlarge, or replace the single-family dwelling that exists on the Property in the same location, as depicted in Exhibit B and described in the Baseline Report. Construction, maintenance, and repair of reasonable appurtenances, including [outdoor decks, garages, sheds, and residential landscaping] are permitted solely in the Development Zone depicted in Exhibit B. No residential structures may be constructed or placed anywhere outside of the Development Zone on the Property.]

(2) **[New Single-Family Residential Dwelling.** Owner may construct, occupy, maintain, repair, demolish, and/or replace one (1) Single-Family Dwelling (as defined in the Napa County zoning regulations in effect as of the Effective Date of this Easement, and subject to the limitations of this Section) (“Dwelling”), along with customary appurtenant accessory residential structures and improvements, at locations entirely within the Development Zone shown in Exhibit B. Any new structures must not have an adverse

impact on the Conservation Values of the Property. No residential structures may be constructed or placed anywhere outside of the Development Zone on the Property.]

(3) [**Other Structure[s]**. Owner may construct a [single-story utility shed, barn, \_\_\_\_] provided that said structure shall not exceed ## square feet total interior floor space and provided that said structure is constructed entirely within the Development [or Agricultural] Zone.]

(4) [**Residential Use Prohibited**. Any residential use of, or activity on, the Property is prohibited. Owner may not construct Dwellings or other appurtenant structures such as athletic courts, barns, sheds, or other buildings on the Property.]

(5) [**Additional Residential Structures**. Owner shall not construct a second or accessory dwelling unit or guest cottage, as defined by Napa County zoning regulations, or other similar residential structure on any portion of the Property.]

- F. Rustic Cabin. X rustic cabin (“Rustic Cabin”), not to exceed \_\_\_\_square feet in living area, excluding porches or decks, may be built on the Property within the X-acre “Cabin Area” described and depicted on Exhibit B or within the Building Envelope provided that the location of the Rustic Cabin does not substantially diminish or impair the Conservation Values. The Rustic Cabin shall not be connected to any commercial or public utilities. The Rustic Cabin may be connected to public utilities, and served with an onsite wastewater treatment system (“OWTS”), such as a porta-potty, vault toilet, or an associated outhouse, located near it. The Rustic Cabin is intended for seasonal use and shall not be used for permanent residential occupancy.
- G. [**ALTERNATIVE: Cabin and Camp Sites**. Grantor reserves an area in the \_\_\_\_\_ portion of the Property (the “Cabin Area”), as generally depicted on **Exhibit B**, for the construction of not more than \_\_\_\_\_ ( ) cabin(s), or in the alternative, huts or yurts, each having a footprint of no more than \_\_\_\_ square feet, excluding porches or decks (collectively, the “Cabin(s)”). Grantor may also construct within the Cabin Area not more than \_\_\_\_\_ ( ) camping sites, [each of] which may be improved with a three-sided shelter with table, tent pad, and fire ring ([collectively], the “Camp Site(s)”). The Cabin(s) and Camp Site(s) may each be served with a porta-potty or vault toilet, also located within the Cabin Area, and may be supplied with water, but shall not be connected to any commercial or public utility. The Cabin Area may not be used for regular residential use. The Cabin(s) and Camp Site(s) shall be located so as not to substantially diminish or impair the Conservation Values. Prior to any construction within the Cabin Area, Grantor will provide Grantee with a description of the proposed location of the Cabin or Camp Site, for Grantee's review and approval. Grantor may repair, maintain, and replace all of these improvements.]
- H. Permitted Buildings. Currently, there is a “Rustic Cabin” located on the Protected Property in a “Building Site Area” approximately XX acres in size. The Building Site is legally described in the Baseline Documentation Report. The Rustic Cabin is generally located and depicted on Exhibit B and more fully described in the Baseline Documentation Report. The Rustic Cabin may be maintained, repaired, remodeled, and replaced within the

Building Site Area. Further, additional buildings, larger than those minor rustic structures permitted under section 3.3, that facilitate or support permitted educational and recreational uses may be constructed, maintained, repaired, remodeled, and replaced within the Building Site Area. The total cumulative footprint of the permitted buildings within the Building Site Area, including the Rustic Cabin, shall not exceed 5,000 square feet. Footprint means the total ground area covered by the structures calculated on the basis of the exterior dimensions of any perimeter walls (whether at or above ground level) and including any balconies, carports or breezeways, patios or terraces, decks, and porches. The permitted buildings are not intended for year-round residential use. No utilities or driveways may be installed to service the Rustic Cabin or other permitted buildings without the prior approval of the Land Trust under the provisions of section 7.6 of this Easement. Any permitted utilities must be located within the Building Site Area.

- I. Camping. Grantor may develop \_\_\_\_\_ ( ) site(s) for primitive camping (the "Camping Site(s)"). [ADD LOCATION: ex: Two of the Camping Sites shall be located within the 2007 Property and one Camping Site shall be located within the 2005 Property. No Camping Site shall be located on the 2013 Property.] The location of the Camping Site(s) shall be subject to Grantee's prior written approval, and the Camping Site(s) shall not be located in [INSERT SPECIFIC CONSERVATION VALUES if relevant] \_\_\_\_\_. The location of the Camping Site(s) may be changed from time to time to reduce the impacts on the Conservation Values provided the old location is fully restored in accordance with Paragraph 12. The Camping Site(s) may include minor recreational structures such as picnic tables and fire pits. The Camping Site(s) may also include yurts, tents, tent platforms, and may include small temporary enclosed shelters or other similar structures that do not include indoor plumbing or kitchens, that are not connected to any commercial water or electrical utility systems and are smaller than \_\_\_\_ square feet each ("Recreational Shelters"). The Recreational Shelters shall not have permanent foundations, shall not be used as permanent residences, and shall be sited and constructed in such a manner so as not to substantially impair the Conservation Values. The Camping Sites may be served with an individual sewage disposal system ("ISDS"), such as a porta-potty, vault toilet, or an adjacent outhouse. (REMOVE CAMPGROUND PROHIBITION IN RECREATIONAL USES PARAGRAPH)
- J. Campsite Areas. "The Campsite Areas, located within the Protected Property and depicted as Lot 1 and Lot 2 in Exhibit C, attached hereto and made a part hereof, each having approximately one (1) acre, shall be limited to their traditional use and character, allowing for maintenance of existing structures and facilities: [Describe here or in an exhibit or refer to Baseline Documentation, for instance: one (1) rustic single-story log cabin having a footprint with associated decks, porches, and steps of 300 square feet and without plumbing or electricity, and a hand-dug well with pump and outdoor fireplace and picnic tables.] Reconstruction or replacement of damaged or destroyed structures may be permitted only with Holder's prior written approval and consistent with the existing use and character of the Campsite Areas, as documented in Baseline Documentation. When Campsite Area structures and facilities cease to be used, as evidenced by the first of the following events: the cessation of their use and/or their lack of maintenance for a period of ( ) years, the lapse of any lease for a period of ( ) years, or the death of the last to die of the original lessees [and name others]; then all campsite structures shall be removed by Grantor, and

Grantor shall restore the site to a natural condition, and it shall thereafter be treated as an area of the Protected Property outside of the "Campsite Areas," and subject to the terms of this Conservation Easement relating thereto."

K. **[ALTERNATIVE: Campsites and Picnic Areas**. Holder is hereby granted the right to establish and maintain on the Protected Property not more than (\_\_\_) primitive campsites and day-use picnic areas (day-use sites) for public use, subject to prior written notice to Grantor as to size, specific location, and number of tent sites at each campsite. [Alternatively, specific areas may be defined in the easement and depicted in an exhibit.] Campsites may contain tent platforms, pit or backcountry toilets, fire rings, small unlighted signs, picnic tables, and other rustic campsite improvements. Day-use picnic sites may contain pit or backcountry toilets, fire rings, small unlighted signs, and picnic tables. All campsites and day-use sites shall be maintained and managed by Holder. [Option: Grantor may establish, maintain, and manage, at its own expense, and after prior written notice to Holder in accordance with Paragraph \_\_\_, not more than (\_\_\_) additional individual primitive campsites, provided that the size and character shall be consistent with restrictions of this section, and otherwise in compliance with the terms of this Conservation Easement.]]

L. **Construction or Placement of Buildings and Other Improvements; Prior Notice Required.** All structures and improvements must be located within the Building Envelope, containing approximately five (5) acres and described or shown in Exhibit C, except as otherwise expressly provided below. Landowners may not undertake construction, erection, installation, or placement of buildings, structures, or other improvements on the Property, except as provided in subsections (a) through (h) below and only within the designated Building Envelope depicted on Exhibit C, except as otherwise expressly provided below. All development on the Property shall comply with the impervious surface limitations contained in Section 5(h) below. Landowners shall give at least thirty (30) days' advance notice to Grantee prior to seeking any building or grading permit or environmental regulatory review in writing in accordance with Section 26 below, providing Grantee with adequate information, documents and plans so as to enable Grantee to confirm compliance with this Easement and enable Grantee to keep its records current. Before undertaking any construction, erection, installation or placement that requires permission, Landowners shall notify Grantee and obtain prior written permission from Grantee pursuant to Section 4 above. All other construction, erection, installation, or placement of buildings, structures, or other improvements on the Property is prohibited.

(1) **Recreational and Other Compatible Structures; Other Improvements:** With prior written notice to Grantee, Landowners may construct, maintain, repair, enlarge, and replace within the Building Envelope recreational (i.e., hunting-related) or other compatible structures, including a cabin or yurt, as are allowed under then-current zoning, provided that any such recreational structures shall not be used for residential uses. Temporary camping or other temporary recreational improvements may be placed anywhere on the Property; provided that any such temporary improvement shall not adversely impact the Conservation Values and shall not exceed thirty (30) consecutive days. Recreational activities exceeding seven (7) days of consecutive use require prior written notification to Grantee.

**Recreational language examples:**

- A. **Recreational Uses.** Owner retains the right to use and permit others to use the Property for low-impact recreational and educational activities that are consistent with the Purpose of this Easement, including [hiking, birdwatching, picnicking, bicycling and horseback riding on existing trails, and other uses similar in nature and intensity]. Owner may construct temporary or similarly low-impact recreational structures that do not adversely affect the Conservation Values of protected by the Easement outside of the Development Zone only with prior approval of the Trust. Under no circumstances shall [athletic fields, motocross tracks, non-residential swimming pools, golf courses or driving ranges, shooting ranges, helicopter pads, or ziplines] be constructed on the Property [outside the Development Zone].
- B. [**ALTERNATIVE:**] Landowner reserves the right to use the Property for small ongoing commercial recreational activities including, but not limited to, hiking, horseback riding, birdwatching, meditating, observing and photographing nature, walking, picnicking, temporary overnight stays, resting, and education that are consistent with the Purposes of this Easement. However, these activities shall be a) on established roads or trails or in the building envelopes and b) compatible with the Purposes of this Easement. These activities shall not a) include groups of over 30 people, b) require any permanent structures, c) significantly diminish or impair the agricultural productivity of the Property, d) result in outcomes that degrade soils or water quality or (e) significantly diminish or impair the open space, natural resource, or scenic values of the Property.

Permanent hotel, restaurant or resort structures, athletic fields, golf courses, non-residential swimming pools, public or commercial airstrips public or commercial helicopter pads, and any other non-agricultural recreational structures or facilities are prohibited on the Property.

Recreational structures or improvements for the personal use of the Landowner and its guests (e.g. swimming pool, tennis court) are permitted only within the Building Envelope. An existing hunting camp is located at the location depicted on Exhibit C. The hunting camp can continue to be used for historic commercial and recreational hunting on the Property.

- C. Recreational Uses. The Property shall remain available for private, public, and commercial recreational uses such as hunting, fishing, and wildlife viewing by Grantor and its invitees, so long as these recreational uses do not substantially diminish or impair the Conservation Values. Grantee may approve the construction of recreational structures and other improvements on the Property in accordance with subparagraph 4.D (Recreational Structures and Improvements).

**[Where proposed recreational uses of the Property *will be de minimis* or less, include the following language. Where recreational uses may be *more* than *de minimis*, do not include this language: "Use of the Property for more than "de minimis" commercial recreation activity is prohibited. The term "de minimis" shall have the meaning as**

set forth in § 2031(c)(8)(B) of the I.R.C. and the Treasury Regulations adopted pursuant thereto."]

**Commercial language examples:**

- A. **Commercial Uses.** No industrial uses shall be allowed on the Property. Unless explicitly prohibited herein, commercial uses are allowed, as long as they are conducted in a manner that is consistent with § 170(h) of the I.R.C. and the Treasury Regulations adopted pursuant thereto, are consistent with the Conservation Purposes, and do not substantially diminish or impair the Conservation Values. Without limiting other potential commercial uses that meet the foregoing criteria, the following uses are allowed as long as they meet the foregoing requirements: processing or sale of farm or ranch products predominantly grown or raised on the Property; home occupations conducted by and in the home of a person residing on the Property; hunting, fishing, wildlife viewing, and camping in undeveloped or unimproved sites; and customary rural enterprises, including but not limited to habitat enhancement, farm machinery repair, bed and breakfasts or commercial overnight occupancy operated within the Residential Dwellings described in Paragraph 4 (Construction of Buildings and Other Structures), if any, livestock veterinary services, and similar enterprises conducted by Grantor or by another person residing on the Property. For any commercial use not expressly enumerated in this paragraph, Grantor shall provide Grantee with written notice of Grantor's proposed use, and Grantor shall only commence such use with Grantee's written approval.
- B. **Commercial Uses.** As used in this Easement, "Commercial Use" is defined as the production of goods or provision of services for sale or trade.

Commercial Use of the Property is prohibited, except for (a) those uses expressly permitted by this Easement, (b) uses which are home occupations permitted under applicable zoning laws, and (c) subject to Trust's prior approval, in its sole discretion, other Commercial Uses found by Trust to be consistent with the Purpose of this Easement described in Section 2.

- i. **Lease of the Property.** Owner may lease or license the Property for uses that are consistent with the terms of this Easement, and in accordance with applicable federal, state, and local laws, regulations, and requirements. Owner shall fully disclose this Easement and its terms as part of any rental or lease of the Property, consistent with Section 11.2.
- ii. **Winery, Event, and Lodging Uses.** Construction or operation of a winery, cave, or any other facility for processing, storing, or serving wine for commercial purposes is prohibited on the Property. Operation of a venue for weddings, parties, retreats, meetings, or other gatherings for which Owner receives compensation is also prohibited on the Property, as is the operation of an inn, hotel, bed and breakfast, short term rental, or other form of commercial lodging.



## **Agricultural language examples:**

### **A. Agricultural Uses** [alternative provisions]

(1) [**Permitted Agricultural Use Allowed.** Owner retains the right to use or permit others to use the [Property/Agricultural Zone] for the Permitted Agricultural Uses described below, in accordance with applicable federal, state, and local laws, regulations, and requirements, and to the extent that such uses are consistent with the agricultural productive capacity and the Conservation Values of the Property.]

(2) [With prior approval from the Trust,] new non-residential buildings and other structures and improvements to be used solely for Permitted Agricultural Uses on the Property, including sale of farm products predominantly grown or raised on the Property, may be built, repaired, reasonably enlarged, and replaced on the Property [only and entirely within the Development Zone depicted in Exhibit B]. Such structures may include barns and sheds but not any Dwelling or farm worker housing.

(3) [**Agricultural Employee Housing.** Owner may build or place agricultural employee housing on the Property only with prior approval of the Trust, and only if Owner demonstrates to the Trust's satisfaction that such agricultural employee housing is reasonable and necessary for the operation of Permitted Agricultural Uses on the Property. Any agricultural employee housing must be located entirely within the Development Zone as established in Exhibit B.]

[Owner may replace agricultural employee housing with prior approval from the Trust and at the existing locations of such structures as shown in Exhibit B.]]

**B. Sheep Camps Agricultural Structures and Improvements.** All existing major agricultural buildings and structures are located within the building envelope of \_\_\_\_\_ acres depicted and described on Exhibit B (the "Building Envelope"). These structures may continue to be used primarily for agricultural purposes and be repaired, enlarged and replaced within the Building Envelope without further permission of Grantee. New major buildings and improvements such as barns, sheds, and garages which are to be used primarily for agricultural purposes, including the processing or sale of farm or ranch products predominantly grown or raised on the Property, may be constructed, repaired, enlarged, and replaced within the Building Envelope. Loafing sheds; corrals; open sided haysheds; water lines; water tanks; temporary, mobile camps, such as a sheep wagons, that are used solely to allow herder(s) to camp near and tend to a rotated herd of livestock actively grazing the Property or another solely agricultural purpose with the express written permission of Grantee; and other incidental agricultural structures and improvements related to the uses permitted by this Deed, including wind, solar, and hydroelectric generation facilities that are primarily for the generation of energy for use in conjunction with the incidental agricultural structures and improvements permitted by this Deed and that are not connected to the electricity utility grid ("Incidental Agricultural Structures"), may be constructed anywhere on the Property. The Incidental Agricultural Structures shall only be used for agricultural purposes and shall not be used for industrial, commercial, or recreational purposes. The individual or cumulative Incidental Agricultural Structures or

location of such structures shall not substantially diminish or impair the Conservation Values.