

Examples of Agricultural Easement Language

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Based on the belief that a working, commercially-viable, agricultural landscape is the desired long-term land use, and that the soil resource is the foundation for agricultural protection, conservation organizations are realizing that agricultural easements, compared to scenic open space or historic easements, are very different.

In general, agricultural easements recognize the farmer's need to be able to respond to a changing agriculture and are written with the knowledge that farmers, perhaps more than any other group of landowners, must make countless decisions on a daily basis about how they work the land, and respond to new market conditions. Timing and flexibility can be critical when deciding if they need to construct a new fence, plant a particular crop, apply nutrients and chemicals, construct or renovate a building, or subdivide or acquire a parcel of land.

We have identified a number of concepts where we have found a variety of approaches within agricultural easements. The following excerpts have been drawn from numerous agricultural easements across the country.

1. Purpose Clauses.

A. Agriculture as the primary purpose.

"This grant of easement in the nature of a Restriction on the use of land for the purpose of preserving productive agricultural land is made this ___ day of ___, 1997 by and between..."

B. Agricultural and natural resource conservation with equal value.

1. "By obtaining this Agricultural Preservation Restriction, it is the intent of the Commonwealth to perpetually protect and preserve agricultural lands, encourage sound soil management practices in accordance with normally accepted agricultural practices, preserve natural resources, maintain land in active agricultural use, and ensure affordable resale values of agricultural land."

2. "It is the purpose of this Agreement to preserve the open space, natural, scenic and agricultural values of the Property and to prevent any uses of the Property that will significantly impair or interfere with those values. This purpose, as further defined by the provisions of this Agreement, is generally referred to collectively herein as "the conservation purpose of this Agreement." Grantor intends that this Agreement will confine the uses of the Property to the following, which are consistent with the conservation purpose of this Agreement: [(a) residential and other improvements associated therewith; (b) agricultural; and (c) management and conservation of natural resources]..."

(Purpose Clauses -- continued)

C. “Agriculture” as primary, with “scenic” if it does not conflict.

1. “It is the purpose of this Easement to enable the Property to remain in agricultural use for the production of food and fiber by preserving and protecting in perpetuity its agricultural values, character, use and utility, and to prevent any use of the Property that would significantly impair or interfere with its agricultural value, character, use or utility. To the extent that the preservation of the open space and scenic values of the Property is consistent with such use, it is within the purpose of this Easement to protect those values.”

2. “It is the primary purpose of this Agricultural Conservation Easement to enable the Property to remain in agricultural use by preserving and protecting its agricultural soils and agricultural viability and productivity. No activity which shall significantly impair the actual or potential agricultural use of the Property shall be permitted. To the extent that the preservation and protection of the natural, historic, recreational, habitat or scenic values referenced in this Easement are consistent with the primary purpose stated above, it is within the purpose of this Easement to also protect those values, and no activity which shall significantly impair those values shall be permitted.”

D. Agricultural as primary, scenic and natural resources secondary.

“Grantor and Grantees acknowledge that the Purposes of this Grant are as follows (hereafter “Purpose of Grant”):

1) Consistent with the goals set forth in [state statute], the primary purpose of this Grant is to conserve productive agricultural and forestry lands in order to facilitate active and economically viable farm use of the Protected Property now and in the future; 2) As a secondary objective, to conserve scenic and natural resources associated with the Protected Property, to improve the quality of life of [state residents], and to maintain for the benefit of future generations the essential characteristics of the [state] countryside [add recreational or educational goals as relevant]; 3) these objectives will be advanced by conserving the Protected Property because it possesses the following attributes: [relevant to each farm property, include agricultural or forestry values (soils), natural areas, wetlands, and habitats; historic features; rivers, streams or ponds; trails or paths used by the public; visibility of the property from public places; proximity to public or other protected lands; and any other relevant features of the property].”

2. Defining “Agriculture”.

A. Easement is silent on defining agriculture. The easement does not mention the definition of agriculture. The interpretation is left to the easement reader, Grantor, and Grantee.

B. Easement uses agricultural agency-based standard (N.R.C.S. or state Agriculture Department).

“Grantor has the right to produce crops, livestock and livestock products and conduct farm operations as defined under Section ___ of the [state agricultural law], or such successor law as is later promulgated, which includes but is not limited to the right to establish, reestablish, maintain, and use cultivated fields, orchards, and pastures. Said farming practices shall be carried out in accordance with sound agricultural practices pursuant to Section ___ of the [state law], or such successor law as is later promulgated, together with the right to construct, maintain and repair unpaved access roads for these purposes.”

C. Easement uses general broad description.

“[Grantor reserves to himself, and to his heirs, successors and assigns,...] (b) To engage in any and all agricultural uses of the Property in accordance with sound, generally accepted agricultural practices consistent with Paragraphs 3 ____. For the purposes of this Easement, “agricultural uses” shall be defined as: breeding, raising, pasturing and grazing livestock of every nature and description, breeding and raising bees, fish, poultry and other fowl; planting, raising, harvesting and producing agricultural, aquacultural, horticultural and forestry crops and products of every nature and description; and the primary processing, storage, and sale, including direct retail sale to the public of crops and products harvested and produced principally on the Property.”

3. Farming Practices, “Sound Agricultural Practices”.

A. Easement is silent.

(Farming Practices, “Sound Agricultural Practices” -- continued)

B. Easement uses standards which will change over time, reflect agricultural community.

1. “As defined in Section ___ of the [state] Agricultural and Markets Law, as amended, sound agricultural practices refer to those practices necessary for the on-farm production, preparation and marketing of agricultural commodities. Such practices shall be evaluated by the commissioner of Agricultural and Markets, upon request, on a case-by-case basis.”
2. “All agricultural production on the subject land shall be conducted in accordance with a conservation plan approved by the County Conservation District or the County Board. Such plan shall be updated every ten years and upon any change in the basic type of agricultural production being conducted on the subject land. In addition to the requirements established by the County Conservation District or the County Board, the conservation plan shall require that: a) The use of the land for growing sod, nursery stock, ornamental trees, and shrubs does not remove excessive soil for the subject land, and b) The excavation of soil, sand, gravel, stone or other materials for use in agricultural production on the land is conducted in a location and manner that preserves the viability of the subject land for agricultural production.”
3. “All farming operations shall be conducted in a manner consistent with the conservation practices recommended by the Natural Resource Conservation Service, or other qualified agricultural consultant, that address soil and water conservation, pest management, nutrient management and habitat protection.”

4. Residential Structures.

A. Include residential structure(s) in designated locations, as referenced in the easement.

1. [Permitted uses:] “To construct or place no more than ___ (within the area delineated as “Ag/Residential” on the Baseline Documentation Site Map) and associated access roads on the Property provided that Grantor shall deliver to District [Grantee] written request for approval of such construction or placement of ___ in accordance with the provisions set for in ___ of this Agreement. District’s [Grantee’s] approval shall be based upon its finding that the proposed construction or placement is consistent with the conservation purposes of this Agreement.”
2. “Grantor has the right to repair or enlarge any or all of the ___ single-family residential dwellings existing within the [building envelope]. No more than ___ new single-family residential dwellings, together with customary appurtenances and non-habitable accessory structures may be constructed with the [building envelope]. The land on which these new residential dwellings stand [shall not be/may be] subdivided from the Property [depending on Property, type of farm operation, and landowner’s wishes].”

B. Allow for floating residential structure(s), to be located later, within the easement.

1. “Residential use of the real property shall be limited to dwelling housing for the owner, relatives of the owner and persons providing permanent and seasonal farm labor services, provided, however, that any such dwelling housing shall be limited to usage of no more than 1 acre for each 20 acres of usable land owned in the Agricultural Preservation District, with a maximum of 10 acres of land being allowed for dwelling housing on an owner’s land within a District. The Property consists of ___ acres, of which ___ acres are usable for agricultural and related uses. There are currently ___ acres used for dwelling housing on the Property, and only ___ additional acres for dwelling housing shall be allowed.”
2. “...the Grantor may construct one Residence on the portion of the Property located east of [said road] as depicted on the [Baseline documentation map], in a location designated by Grantor and approved by Grantee, which approval shall not be unreasonably withheld. Grantee shall grant such approval within thirty (30) days of Grantor’s request unless Grantee determines that the proposed Residence would be unnecessarily located on prime or unique soil, or would otherwise materially diminish the agricultural productivity of the Property....”

C. Omit residential structures from the easement.

Cut residential lots (frequently on 2-3 acres) out of the Property prior to placing the Property under a conservation easement.

5. Farm Housing (for employees or tenants).

A. Allowed with permission.

1. [The following activities shall not be conducted without the prior written approval of the Grantee, which may be granted in accordance with the procedures set forth in Section ___ of this Restriction] “(1) The construction or placing of permanent structures for housing seasonal agricultural employees or other agriculturally related uses, including [related retail sales....]”

2. “All existing dwellings and structures used to house farm tenants and employees may be repaired, reasonably enlarged and replaced at their current location without further permission of Grantee. New single- or multi-family dwellings or structures to be used solely to house farm tenants, employees, or others engaged in agricultural production on the Property may be built only within the area identified and marked [building envelope] on Exhibit B [Baseline documentation map]. At the time that construction of such structures is to commence, Grantee shall be notified so that its records can be updated.”

B. Allowed within a designated area, without prior permission.

1. “Grantor has the right to repair, enlarge or replace any or all dwellings or structures used to house farm tenants and/or employees within the [building envelope], (subject to applicable laws). New single- or multi-family dwellings or structures to be used solely to house farm tenants, employees or others engaged in agricultural production on the Property may be constructed within the [building envelope]. Existing non-habitable structures may be adaptively reused to create farm labor and/or tenant housing, subject to applicable laws. The land on which these structures stand shall not be subdivided from the [building envelope].”

2. “[Grantor has the] right to construct and maintain ___ additional farm labor housing unit(s), together with the necessary driveways, utilities and appurtenant structures or improvements normally associated with a residence, provided, however, that the farm labor housing unit(s) shall be occupied by at least one person who is a member of the Grantor’s family or who is employed on the farm. In the event the unit is not required for housing a farm employee or member of Grantor’s family, the Grantor may rent the unit to other persons for a lease term not to exceed one year. The farm labor housing unit(s) shall not be conveyed separately from the Protect Property, but may be subdivided with the prior written approval of Grantee if such subdivision is required by state or local regulation. No prior approval of Grantee shall be required for construction of any farm labor housing unit or appurtenance structure or improvement located within the [Building Envelope] described in the preceding paragraph, provided Grantor shall notify Grantee prior to commencing construction on any such housing unit, structure or improvement.”

C. Allowed without permission, if under size threshold and within the Building Envelope:

“Farm Support Housing shall consist of apartments, single or multi-family dwellings, or other buildings, including trailers or mobile homes, to be used to house farm tenants, employees, seasonal employees, family members, or others engaged in agricultural production on the Property. All Farm Support Housing shall be located completely within the [Building Envelope] as shown on [Baseline Documentation] and shall be in accordance with [septic laws and regulations]. Existing non-habitable buildings may be renovated to create Farm Support Housing. A total aggregate of {3,000 or 5,000} square feet of Farm Support Housing living space (depending on the number of [building envelopes]) is permitted within each [Building Envelope] with prior notice to Grantee.

The existing dwellings or buildings used for Farm Support Housing may be repaired and replaced at their current location without further permission from Grantee. Existing Farm Support Housing may be enlarged with prior notice to Grantee as described in [permission and notice section of easement]. New Farm Support Housing may be constructed, repaired, or enlarged, on the Property only within the area identified and marked as a [Building Envelope] on the [Baseline Documentation] with prior notice to Grantee as described in [permission and notice section of the easement]. Such housing shall be in compliance with [septic laws and regulations].

Grantor may enlarge or construct Farm Support Housing beyond the aggregate {5,000/3,000} square feet, within each of the [building envelope] as shown on the [Baseline Documentation], only with prior permission from Grantee as described in [the permission and notice section of the easement]. However, if Farm Support Housing is no longer needed for that purpose, the buildings may continue in residential use. Farm Support Housing, or their continuation into residential use, shall not be subdivided from the [Building Envelope] as further described in [subdivision section of easement].”

6. Agricultural Structures.

A. Farmer decides.

“The construction or use of any building or other structure on the subject land other than as existing on the date of the delivery of this Deed is prohibited except that:(c) the construction or use of any building or structure for agriculture production is permitted.”

B. Farmer decides, under a size threshold.

“Grantor may remove, repair or replace existing Agricultural Buildings and Improvements in the [majority of the Property] without prior permission of the Grantee. New Agricultural Buildings, or the enlargement of existing Agricultural Buildings, within the [majority of the Property] are permitted with prior notice to the Grantee to ensure such buildings’ construction does not exceed an aggregate total of 5,000 square feet. Grantor may enlarge or construct Agricultural Buildings in the [majority of the Property] greater than the aggregate 5,000 square foot threshold specified above only with the prior permission of Grantee [pursuant to permission section].”

C. Farmer decides within the building envelope, permission necessary outside the building envelope.

“Grantor has the right to maintain, repair, and enlarge all existing buildings and improvements and to construct, maintain and repair new buildings and other improvements within the [Building Envelope]. Said structures shall be used solely for agricultural purposes or other purposes directly related thereto, including but not limited to the processing or sale of farm products, in accordance with sound agricultural practices as defined in Section ___ of the Agricultural and Markets Law, or such successor law as is later promulgated. Notwithstanding the provisions of this Section, said structures may be adaptively used for farm labor or tenant housing as defined in Section ___ herein, and/or for non-agricultural home occupations or cottage industries as defined in Section ___ herein. The land on which these structures stand shall not be subdivided from ownership of the [Building Envelope], except as outline in Section ___ herein.

[under a different section in the easement the following applies:] Grantor has the right to construct, maintain and repair new buildings and other improvements solely for agricultural purposes within the Farm Area [the farm outside of the building envelope], and in accordance with sound agricultural practices as defined under Section ___ of the Agricultural and Markets Law, or such successor law as is later promulgated, with the advance written permission of Grantee. Grantee shall give written permission within 30 days of receipt of a request for such permission, provided that Grantor has supplied sufficient information to make such a determination, unless Grantee determines that the proposed building or structure would be unnecessarily located on prime and/or unique soils, or would otherwise significantly diminish the agricultural production capacity of the Property. Permission shall be deemed granted if no decision is communicated to Grantor within 30 days of the written request. The land on which these structures stand shall not be subdivided from ownership of the [building envelope] except as outline in Section ___ herein.”

D. Allowed with prior approval from Grantee.

“...Grantor shall have the right to make the following uses of the Protected Property:...the right to construct and maintain barns, sugar houses, or similar structures or facilities, together with necessary access drives and utilities, on the Protected Property, provided that they are used exclusively for agricultural or forestry purposes, and provided further that such construction has been approved in writing in advance by the Grantee. Grantee’s approval shall not be unreasonably withheld or conditioned, provided the structure or facility is located in a manner which is consistent with the Purposes of this [Easement] as stated in [the Purposes section of the easement], above.”

7. Approval for agricultural construction and improvements. Can either be within subject sections, or within a separate “approval section”.

A. As-of-right, may need to notify Grantee. One of the more common approaches. Allows the farmer maximum ability to respond to market and farming demands.

B. Prior permission from Grantee. Grantee granting permission based on a performance standard and turn-around time, i.e. if it does not impair or diminish the agricultural viability and water quality of the Property.

7.C. Permission necessary over a size threshold. In other words, if a building is greater than 5,000 square feet, the Grantee would need to give permission based on a performance standard, as discussed above.

8. Subdivision.

A. Permitted with permission.

1. "The Property may be subdivided into no more than ___ residential dwelling lots [corresponding with the number of Building Envelopes] with prior permission from the Grantee. However, under no circumstances shall any [Building Envelope] itself be subdivided. Non-residential subdivision of the Property is prohibited without the advance written permission of the Grantee. The Grantee shall not give such permission, unless the Grantor demonstrates to Grantee that the proposed subdivision will not otherwise substantially diminish or impair the agricultural productivity or water quality benefits of the Property. Farm Support Housing may not be sold or subdivided separately from the residential dwelling in the [Building Envelope] and parcel in which it is located."

2. "Agricultural subdivisions are subject to the prior written approval of the Grantee. Agricultural subdivisions shall be compatible with the "Subdivision Guidelines for Land Subject to an Agricultural Easement," published by the ___ County Farmland Preservation Board, 199___, as revised. Such Guidelines are made a part hereof in the Baseline Documentation, which is on file at the office of the Grantee and is incorporated by this reference."

B. Permitted, without permission.

"The Property may not be subdivided so as to allow more than one (1) principal dwelling lot. This restriction shall not preclude lot line adjustments that do not create additional building lots, and shall not preclude the creation of other parcels for farming and open space on which no residential building is allowed. Notwithstanding, the [building envelope], as shown on [Baseline documentation map] and attached hereto may not be subdivided."

C. Residential subdivision prohibited, except small area around residential dwelling:

"Residential subdivisions are prohibited, except for one lot of no more than two (2) acres with the existing dwelling or additional permitted dwelling."

9. Trash and Waste Disposal.

1. "The dumping, land filling, or accumulation of any kind of waste on the Property, other than farm related waste or equipment generated on the Property that does not substantially diminish or impair the agricultural productivity and water quality benefits of the Property, is strictly prohibited. However, this shall not prevent the storage of agricultural products and byproducts on the Property, so long as it is done in accordance with sound agricultural practices, a current whole farm plan, and all applicable government laws and regulations."

2. "No refuse, trash, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive or hazardous waste or other substance or material whatsoever, shall be placed, stored, dumped or permitted to remain on the Premises, except as required for the use of the Premises for normal agricultural activities."

3. "No trash, refuse, vehicle bodies or parts, rubbish, debris, junk, waste, radioactive or hazardous waste, shall be placed, stored, dumped, buried or permitted to remain on the Property, except as reasonably required for the use of the Property for agricultural activities, and except as in accordance with applicable local, state and federal laws and regulations. Materials located in dump sites existing as of the date of this Easement, as indicated on Exhibit B, may remain. The storage of agricultural products, byproducts and agricultural equipment on the Property, so long as such storage is done in accordance with all applicable government laws and regulations, is permitted."

10. Dispute Resolution/Arbitration.

1. "If a dispute arises between the parties concerning the consistency of any proposed use or activity with the purpose of this Easement, and Grantor agrees not to proceed with the use or activity with the purpose of this Easement, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may refer the dispute to arbitration by request made in writing upon the other. Within thirty (30) days of the receipt of such a request, the parties shall select a single arbitrator to hear the matter."

(10.1. continued)

If the parties are unable to agree on the selection of a single arbitrator, then each party shall name one arbitrator and the two arbitrators thus selected shall select a third arbitrator; provided, however, if either party fails to select an arbitrator, or if the two arbitrators selected by the parties fail to select their arbitrator within fourteen (14) days after the appointment of the second arbitrator, then in each such instance a proper court, on petition of a party, shall appoint the second or their arbitrator or both, as the case may be. A judgment on the arbitration's award may be entered in any court having jurisdiction thereof. The prevailing party shall be entitled, in addition to such other relief as may be granted, to without limitation, the fees and expenses of the arbitrator(s) and attorneys' fees, which shall be determined by the arbitrator(s) and any court of competent jurisdiction that may be called upon to enforce or review the award."

2. "If a dispute arises between the Grantor and Grantee concerning the consistency of any proposed use or activity with the purposes of this Easement or any of the specific provisions contained herein, and Grantor agrees not to proceed with the use or activity pending resolution of the dispute, either party may request a meeting between the parties, or refer the dispute to a mediator knowledgeable about production agriculture and water quality protection to recommend potential resolution of the dispute. Reasonable costs associated with the mediation process shall be determined by the impartial mediator."

11. Rural Enterprises.

A. Within the building envelope as-of-right; outside the building envelope with prior permission.

"Use of the Property for [Rural Enterprises] is permitted. Rural Enterprises shall include, but not be limited to, lawful home occupations, professional home offices, bed and breakfasts, farm machinery and auto repair, saw mills, firewood distribution, campgrounds, home schooling, day care and other educational programs. However, trailer parks, golf courses, and auto dealerships are expressly prohibited on the Property. Buildings and improvements relating to Rural Enterprises, except those described below, must be completely located within the [Building Envelope].

The existing buildings and improvements used for Rural Enterprises may be removed, repaired, and replaced without further permission of the Grantee. Existing rural enterprise buildings and improvements, inside the [Building Envelope] may be enlarged with prior notice to Grantee [per notice and permission section in easement]. Existing rural enterprise buildings and improvements outside the [Building Envelope] may be enlarged with the advance written permission of the Grantee [per notice and permission section in easement]. New buildings and improvements necessary for Rural Enterprises outside the [Building Envelope] may only be constructed with the advance written permission of the Grantee [per notice and permission section in easement]."

B. As-of-right anywhere on the Property.

"Customary part-time or off-season minor or rural enterprises and activities which are provided for in the County Agricultural Easement Purchase Program approved by the State Board are permitted."

C. With prior permission.

1. "Grantors retain the right to use the Property for otherwise lawful and customary rural enterprises, such as, but not limited to, farm machinery repair, sawmills, firewood distribution, or educational programs so long as such uses are confined to locations within the "Farmstead Area" as identified on Exhibit B. Conducting customary rural enterprises on any other part of the Property is not permitted without the advance written permission of the Grantee in each instance. The Grantee shall not give such permission unless the Grantee determines that the proposed use will not substantially diminish or impair the conservation values of the Property."

2. "The right to conduct any gainful home occupation or profession in the residences referred to [in building envelope described in the easement], provided any such activity is confined within the residence and is conducted primarily by persons who reside in the dwelling. Further, the right to engage in accessory uses of the Protected Property, provided such uses are related to the principal agricultural, forestry, and open space uses of the Protected Property, and are subordinate and customarily incidental to those principal uses. Grantor shall not engage in any such home occupation or accessory use of the Protected Property without first securing the prior written permission of the Grantees, which permission may be withheld if Grantees determine, in their sole discretion, that the occupation, profession or accessory use would be inconsistent with the Purposes of the Grant as stated in [the easement's Purpose Clause]."

12. Recreational Uses and Improvements.

A. Within threshold, prior notice; over threshold, prior permission.

“Use of the Property for rural recreational uses is permitted anywhere on the Property. These uses may include, but are not limited to, hunting, fishing, trapping, skiing, snowmobiling, horseback riding, hiking, and non-commercial camping. Golf courses, commercial recreational uses involving motorized vehicles, and commercial camping outside the [Building Envelope] is prohibited on the Property. The construction of buildings and improvements for recreational uses are allowed anywhere on the Property with the exception of the [an area defined in the easement], and shall not be improved by permanent utilities. An aggregate 1,000 square feet of recreational buildings is permitted, with prior notice to Grantee. Construction or conversion of buildings over the 1,000 square foot aggregate, up to a maximum 5,000 square foot aggregate, is permitted only with advance written approval of the Grantee.”

B. Within building envelope, as-of-right; outside of building envelope, prior permission.

1. “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.”
2. “All existing recreational improvements, if any, may be repaired, reasonably enlarged or replaced at their current locations, which are shown on [conservation easement map].”
3. “New recreational improvements may be built within the area identified as [specified area on conservation easement map]. Any new recreational improvements proposed for locations outside the area identified as [specified area on conservation easement map] may be built only with the permission of Grantee. Under no circumstances shall athletic fields, golf courses or ranges, commercial airstrips, commercial helicopter pads or any other similar recreational improvements that impair or interfere with the purpose of this easement, significantly disturb the soil profile, or adversely affect agricultural and forestry uses on a continuing basis be allowed on the Property.”