



April 17, 2007

TO: Conservancy Members

FROM: Sam Schuchat, Executive Officer
Jack Judkins, Staff Counsel

RE: Executive Officer's Report: Consideration and Possible Adoption of Standards and Practices Governing Grants for Easement Acquisition

Based on input at the October 2006 Conservancy meeting, staff has prepared a proposed resolution by which the Conservancy would adopt the *State Coastal Conservancy Standards and Practices Governing Grants for the Acquisition Conservation Easements* ("standards and practices"). Staff has also received and addressed comments on the proposed standards and practices, as outlined later in this memorandum. The standards and practices are attached ("Exhibit A"), along with the memo dated September 28, 2006, presented to the Conservancy in October ("Exhibit B"). As that memo details, the proposed standards and practices are modeled after and parallel to "policies" recently adopted by the Wildlife Conservation Board. The WCB policies were developed through meetings in the past year sponsored by WCB and attended by WCB, Conservancy and other public agency staff and representatives of land trusts and other easement holders.

The proposed resolution would:

1. Adopt the standards and practices as a guideline to Conservancy staff development of conservation easement projects. Conservancy staff will work with potential grantees to establish, at an early stage, the parameters for an easement acquisition, consistent with the standards and practices.
2. Require that any recommendation for Conservancy authorization of funding of a conservation easement discuss the consistency of the proposed project with the standards and practices. At the time of consideration and possible authorization, the Conservancy members will be made aware of whether an easement acquisition project is consistent with the standards and practices.

3. Allow for the Executive Officer to vary from the standards and practices if necessary to achieve the conservation purposes of the Conservancy authorization. This provides flexibility to address unanticipated events arising after Conservancy authorization, which might result in loss of an important easement acquisition.

The proposed resolution reads as below. (“Exhibit A”, the proposed standards and practices, follows this memorandum).

“In order to ensure public confidence and accountability with respect to conservation easements whose acquisition is funded by the State, and to ensure protection of coastal resources, consistent with the terms of such easements, the State Coastal Conservancy hereby adopts the *State Coastal Conservancy Standards and Practices Governing Grants for the Acquisition of Conservation Easements* (“standards and practices”), attached to this resolution as Exhibit A. The standards and practices shall guide Conservancy staff in developing conservation easement acquisition projects. In any recommendation for Conservancy authorization of a grant to fund acquisition of a conservation easement, Conservancy staff shall discuss the consistency of the proposed action with the standards and practices. The Conservancy delegates to its Executive Officer the authority to vary from the standards and practices when necessary to achieve the conservation purposes of the Conservancy’s authorization.”

As was requested by the Conservancy at the October meeting, Conservancy staff has provided a copy of the standards and practices to each of the representatives of nonprofit and public agency entities who participated in the WCB meetings at which these were developed. Notice was also given that the Conservancy would consider adoption of the standards and practices at its meeting of November 9, 2006. To date, the following comments have been received:

1. From WCB staff: an endorsement of the proposed adoption.
2. From Michele Clark, Transaction Director, California Rangeland Trust: a concern regarding inclusion of the monitoring requirements in the easement language. Under the standards and practices, only the minimum monitoring requirements (the protocol) will be included in the easement; the detailed monitoring plan and any subsequent amendments of it will be created (and approved by the Conservancy) outside of the easement without amendment of the easement language. Failure by the easement holder to monitor will not invalidate the easement, although, as a breach of an essential provision, it will give rise to the right of the Conservancy to take over as easement holder. Ms. Clark was satisfied with this explanation.
3. From the California Coastal Commission. The Commission, through its staff and individual Commissioners, expressed concerns about public involvement in the process of Conservancy funding and subsequent oversight of conservation easements and the transparency of that process. Discussion between Commission and Conservancy staff and clarification of the standards and practices, as proposed, resolved the majority of the Commission concerns. In response to Commission concerns, the Conservancy staff has also revised the introductory paragraph of the standards and practices to highlight that, as with any other funding decision, the process of Conservancy authorization of funding for conservation easements is open and public and that the Conservancy may, on its own initiative or because of public input, decide

to impose conditions on any easement funding proposal that are more detailed than or surpass the standards and practices.

Because these standards and practices will bring uniformity to the State's funding of conservation easement acquisitions and provide guidelines for development of easement acquisition projects that will ensure that the Conservancy's investment is protected over the long-term, staff recommends that the Conservancy adopt the proposed resolution.

EXHIBIT A

State Coastal Conservancy

Standards and Practices Governing Grants for the Acquisition of Conservation Easements

May 24, 2007

INTRODUCTION

The following are intended to guide Conservancy staff in developing projects for the acquisition of a conservation easement by an entity (“the grantee”) to which the Conservancy has authorized the grant of funds for the acquisition.

As with all other grant funding, the Conservancy authorizes funding for the acquisition of conservation easements at noticed meetings at which the public is encouraged to participate and provide comments. In authorizing such grant funding, the Conservancy may, on its own initiative or upon request of the public, impose conditions on the authorization that are appropriate to the specific project, including, in the context of the acquisition of a conservation easement, conditions or other requirements that are more specific or otherwise surpass the standards specified below.

GRANT AGREEMENTS AND EASEMENTS

Grant agreements awarding funds for the acquisition of conservation easements and the instrument conveying the conservation easement (“conveyance documents” or “deed of conservation easement”) shall be consistent with the following minimum standards and each must clearly state the purposes of the acquisition. The acquisition purposes should, at a minimum, articulate and be consistent with the relevant purposes and requirements of Division 21 of the Public Resources Code and the funding source(s) used to pay for the acquisition. The resources and conservation values to be protected shall be identified in both the grant agreement and in the deed of conservation easement

RETENTION OF DOCUMENTS

Approved appraisals, conformed copies of recorded conveyance documents, title reports and title policies, baseline conditions reports, transaction documents, management plans and monitoring reports, as applicable, shall be provided to the Conservancy and retained in the Conservancy offices.

BASELINE CONDITIONS REPORT

Prior to the close of escrow for the acquisition of a conservation easement purchased with funds approved by the Conservancy, the Executive Officer shall have approved documentation providing detailed information on the condition of the property to be protected. The documentation (Baseline Conditions Report) shall be tailored to the purposes of the grant and the specific conservation values to be protected by the conservation easement. Descriptions of the condition of the property and conservation values should be sufficiently detailed to allow for meaningful future comparisons.

The Baseline Conditions Report must be completed, signed, and certified by the landowner(s) and the grantee by the close of escrow. The certification must confirm that the Baseline Conditions Report is a current and accurate description and representation of the property, the health of its resources and conservation values as of the closing.

The Baseline Conditions Report shall provide a narrative that characterizes the overall general condition of the conservation values protected by the conservation easement. For purposes of baseline documentation, the report must provide descriptions that are clearly defined and sufficiently detailed to allow for meaningful future comparisons and must: (a) describe and document the features and characteristics of the property in relation to the purposes, conservation values, and terms of the conservation easement at the time the conservation easement is granted; (b) describe and document the conservation values and resources to be protected by the conservation easement; (c) contain all information necessary for the grantee to administer, monitor and enforce the conservation easement; and (d) include a copy of the conservation easement in the form to be recorded. The grant agreement shall specify these minimum requirements for the content of a Baseline Conditions Report.

MONITORING CONSERVATION EASEMENTS

The grant agreement shall require the grantee to monitor land protected with a conservation easement purchased with Conservancy funds. The deed of conservation easement shall acknowledge the right of the grantee to undertake compliance monitoring and shall establish minimum requirements for monitoring that are consistent with the requirements described below.

Compliance monitoring shall assess compliance with the terms of the conservation easement and note any changes to the property as compared to the Baseline Conditions Report and the prior monitoring report. The grantee shall monitor the property at least annually (or less frequently, if the Conservancy determines that conditions in a specific case do not warrant annual monitoring) to assess compliance with the terms and conditions of the conservation easement, as well as whether the purposes of the conservation easement and the grant agreement are being met.

The grantee shall provide notice to the Executive Officer of any periodic or other monitoring of the protected property and, on request of the Executive Officer, Conservancy staff shall be permitted to accompany the grantee on any monitoring visit.

Conservancy staff shall accompany the grantee on periodic or other monitoring to the extent that the Executive Officer determines necessary to assess compliance with the terms, covenants and conditions of the conservation easement and the grant agreement. Where funding for the acquisition of a conservation easement has been provided by one or more other state agencies imposing similar requirements, the Conservancy may accept compliance reports from another such agency in lieu of making its own site visit.

Prior to the close of escrow for the acquisition of a conservation easement purchased with Conservancy funds, the Executive Officer shall have approved an individualized monitoring plan for the property to be protected. Using the Baseline Conditions Report as a benchmark, the monitoring plan should be adaptive and address the purposes, minimum frequency, timing and methods of monitoring the property to be carried out by grantee. The monitoring plan is the framework that will guide the preparation for and implementation of the grantee's monitoring of the conservation easement.

The monitoring plan must be tailored to address the purposes, terms and conditions of the conservation easement and the purposes of grant. The grant agreement and the deed of conservation easement shall describe the minimum requirements for a monitoring plan and describe a process for amending the plan, as necessary, over time.

The grantee shall provide a written report of its monitoring activities and the results of such monitoring to the Conservancy in accordance with the approved monitoring plan. The monitoring report shall document and describe the monitoring activities in a manner that demonstrates the monitoring was conducted in accordance with the approved monitoring plan.

ESSENTIAL PROVISIONS OF CONSERVATION EASEMENTS

The deed of conservation easement for any acquisition funded by the Conservancy should include the following essential provisions:

1. The deed of conservation easement shall contain language that prohibits its amendment, transfer or use as security for any debt, without the approval of the Executive Officer. (The Executive Officer shall approve any such amendment, transfer or use only if the acquisition purposes and conservation values would not be impaired as a result.)
2. No use of property subject to the conservation easement that is inconsistent with the acquisition purposes shall be permitted.
3. The conservation easement shall continue as a servitude running in perpetuity with the real property. (There shall be no provision in a conservation easement pursuant to which the landowner and the easement holder may voluntarily extinguish the

conservation easement. Conservation easements whether in whole or in part, may only be extinguished through appropriate legal proceedings (e.g., eminent domain).)

4. If all or part of the property subject to the conservation easement is taken in the exercise of eminent domain, and if the grantee is entitled to receive any proceeds, whether by agreement or court order, for the public taking of the conservation easement, the grantee shall provide to the Conservancy a share of the proceeds proportionate to the Conservancy's contribution towards the purchase price of the conservation easement.

5. If the easement holder should abandon the conservation easement or cease to exist (without first transferring its interest to another entity qualified to hold conservation easements and approved by the Executive Officer), or if any of the essential terms above are violated, then all of the easement holder's right, title and interest in the conservation easement shall automatically vest in the State of California for the benefit of the Conservancy or its successor, upon recordation of a certificate of acceptance of the conservation easement following approval by the Conservancy and the Department of General Services and/or the State Public Works Board, if required by law. However, the State, through the Executive Officer of the Conservancy, or its successor, may designate another public agency or a nonprofit organization to accept the right, title and interest, in which case vesting shall be in that agency or organization rather than in the State.

EXHIBIT B



September 28, 2006

TO: Conservancy Members

FROM: Sam Schuchat, Executive Officer
Jack Judkins, Staff Counsel

SUBJECT: Executive Officer's Report: Conservation Easement Discussion

The Conservancy has been involved for almost a year in discussion of appropriate standards for projects involving the acquisition of conservation easements. At the Conservancy meeting of February 3, 2006, Deputy Executive Officer Steve Horn presented information on Conservancy practices related to the funding of conservation easements. A copy of the memo provided to the Conservancy is attached.

Subsequently, the Wildlife Conservation Board (WCB) convened a series of meetings with representatives of the land trust community and state agencies to cooperatively develop principles that would ensure that WCB's conservation purpose in funding an easement would remain adequately protected. Conservancy staff participated in these meetings and concurred in the consensus reached by the parties that development of an easement acquisition project funded by the State should generally be guided by five basic principles, summarized as follows:

1. Purpose: The purpose of the conservation easement should be clearly articulated in the State agency grant agreement and in the easement and be consistent with the funding source and the State agency's enabling legislation.
2. Baseline Conditions: Prior to close of escrow, a "Baseline Report", detailing and documenting the conservation values to be protected under the grant, should be prepared, provided to and approved by the State agency, and retained in the offices of the State agency.
3. Monitoring: The easement property should be regularly monitored by the easement holder for compliance, the easement holder should provide the State agency with a copy of each periodic monitoring report, and the State agency should have the right to accompany the easement holder on monitoring visits.
4. Changes to the Easement: The State agency should have the opportunity to review and approve any changes in the easement terms or any transfer to another easement holder.

5. Enforcement: If violation of the easement purpose or other essential terms or conditions occurs, the State agency should have the ability to enforce compliance.

At its meeting of August 17, 2006, WCB formally adopted these same five principles as “policies” guiding the WCB procedures for funding conservation easements. A copy of the adopted WCB policies is attached.

Historically, Conservancy staff has incorporated these principles into the development of easement projects. Since each easement acquisition project involves unique conservation values, differing funding partners and individual landowners with different interests, the manner in which these basic principles are integrated into the easement project can and has varied. Conservancy staff will continue to inform the Conservancy of the relevant features in each new easement at the time Conservancy authorization for funding of that easement is requested.

Several Conservancy members have expressed an interest in Conservancy consideration and possible adoption of similar standards. Accordingly, for the purposes of discussion at October, 2006 meeting and for possible action at a future meeting, Conservancy staff has prepared a set of proposed standards, based on these same basic principles. These standards, which have been revised from WCB’s version to reflect the requirements of the Conservancy’s enabling legislation and appropriation language, are attached. The standards are annotated so that the Conservancy’s “standards” are cross-referenced to the parallel or related WCB “policy”.

As noted above, Conservancy staff agrees that these principles should guide the development of any Conservancy funded conservation easements. It is worth remembering that each easement is negotiated with particular landowners and is thus unique. Landowners may have specific sensitivities or needs, and often there are other funders involved with varying requirements which must be harmonized. Thus, overly precise application of these standards and practices may result in the inability to take advantage of a fleeting opportunity to secure an easement that would otherwise unconditionally achieve the Conservancy’s statutory conservation objectives, because, for one reason or another, the project cannot fully meet all aspects of a particular standard. Thus, staff would recommend that any proposed standard be adopted reflecting this possible need for future flexibility.

State Coastal Conservancy

Standards and Practices Governing Grants for the Acquisition of Conservation Easements October 5, 2006 DISCUSSION DRAFT

INTRODUCTION

The following are intended to guide Conservancy staff in developing projects for the acquisition of a conservation easement by an entity (“the grantee”) to which the Conservancy has authorized the grant of funds for the acquisition.

GRANT AGREEMENTS AND EASEMENTS

Grant agreements awarding funds for the acquisition of conservation easements and the instrument conveying the conservation easement (“conveyance documents” or “deed of conservation easement”) shall be consistent with the following minimum standards and each must clearly state the purposes of the acquisition. The acquisition purposes should, at a minimum, articulate and be consistent with the relevant purposes and requirements of Division 21 of the Public Resources Code and the funding source(s) used to pay for the acquisition. The resources and conservation values to be protected shall be identified in both the grant agreement and in the deed of conservation easement. [WCB Policy: “Grant Agreements”, p. 1; same, except first sentence deleted and other minor non-substantive changes]

RETENTION OF DOCUMENTS

Approved appraisals, conformed copies of recorded conveyance documents, title reports and title policies, baseline conditions reports, transaction documents, management plans and monitoring reports, as applicable, shall be provided to the Conservancy and retained in the Conservancy offices. [WCB Policy, “Retention of Documents”, page 1; same language]

BASELINE CONDITIONS REPORT

Prior to the close of escrow for the acquisition of a conservation easement purchased with funds approved by the Conservancy, the Executive Officer shall have approved documentation providing detailed information on the condition of the property to be protected. The documentation (Baseline Conditions Report) shall be tailored to the purposes of the grant and the specific conservation values to be protected by the conservation easement. Descriptions of the condition of the property and conservation values should be sufficiently detailed to allow for meaningful future comparisons.

The Baseline Conditions Report must be completed, signed, and certified by the landowner(s) and the grantee by the close of escrow. The certification must confirm that the Baseline Conditions Report is a current and accurate description and representation of the property, the health of its resources and conservation values as of the closing.

The Baseline Conditions Report shall provide a narrative that characterizes the overall general condition of the conservation values protected by the conservation easement. For purposes of baseline documentation, the report must provide descriptions that are clearly defined and sufficiently detailed to allow for meaningful future comparisons and must: (a) describe and document the features and characteristics of the property in relation to the purposes, conservation values, and terms of the conservation easement at the time the conservation easement is granted; (b) describe and document the conservation values and resources to be protected by the conservation easement; (c) contain all information necessary for the grantee to administer, monitor and enforce the conservation easement; and (d) include a copy of the recorded conservation easement.

The grant agreement shall specify these minimum requirements for the content of a Baseline Conditions Report. [WCB Policy "Baseline Conditions Report", p. 2; same language]

MONITORING CONSERVATION EASEMENTS

The grant agreement shall require the grantee to monitor land protected with a conservation easement purchased with Conservancy funds. [WCB Policy, "Monitoring Conservation Values" ; WCB paragraph "IV", first sentence] The deed of conservation easement shall acknowledge the right of the grantee to undertake compliance monitoring and shall establish minimum requirements for monitoring that are consistent with the requirements described below. [This sentence is new – reflects that easement is the vehicle for Conservancy requirements – not the grant agreement exclusively]

Compliance monitoring shall assess compliance with the terms of the conservation easement and note any changes to the property as compared to the Baseline Conditions Report and the prior monitoring report. [WCB Policy, "Monitoring Grants and Conservation Values", WCB paragraph "I"] The grantee shall monitor the property at least annually (or less frequently, if the Conservancy determines that conditions in a specific case do not warrant annual monitoring) to assess compliance with the terms and conditions of the conservation easement, as well as whether the purposes of the conservation easement and the grant agreement are being met. [WCB Policy,

“Monitoring Grants and Conservation Values”, paragraph “IV”, second sentence, with added possible exception for less frequent periodic monitoring]

The grantee shall provide notice to the Executive Officer of any periodic or other monitoring of the protected property and, on request of the Executive Officer, Conservancy staff shall be permitted to accompany the grantee on any monitoring visit. Conservancy staff shall accompany the grantee on periodic or other monitoring to the extent that the Executive Officer determines necessary to assess compliance with the terms, covenants and conditions of the conservation easement and the grant agreement. Where funding for the acquisition of a conservation easement has been provided by one or more other state agencies imposing similar requirements, the Conservancy may accept compliance reports from another such agency in lieu of making its own site visit. [This replaces WCB Policy “Monitoring Grants and Conservation Values”, paragraph “V”; the Conservancy is not a land management agency and does not have the capacity to monitor every easement “at least every three years”, but retains the right to attend any monitoring visit, as needed]

Prior to the close of escrow for the acquisition of a conservation easement purchased with Conservancy funds, the Executive Officer shall have approved an individualized monitoring plan for the property to be protected. Using the Baseline Conditions Report as a benchmark, the monitoring plan should be adaptive and address the purposes, minimum frequency, timing and methods of monitoring the property to be carried out by grantee. The monitoring plan is the framework that will guide the preparation for and implementation of the grantee’s monitoring of the conservation easement. [WCB Policy “Monitoring Grants and Conservation Values”, paragraph “II”]

The monitoring plan must be tailored to address the purposes, terms and conditions of the conservation easement and the purposes of grant. The grant agreement and the deed of conservation easement shall describe the minimum requirements for a monitoring plan and describe a process for amending the plan, as necessary, over time. [WCB Policy “Monitoring Grants and Conservation Values”, paragraph “III”]

The grantee shall provide a written report of its monitoring activities and the results of such monitoring to the Conservancy in accordance with the approved monitoring plan. The monitoring plan shall document and describe the monitoring activities in a manner that demonstrates the monitoring was conducted in accordance with the approved monitoring plan. [WCB Policy “Monitoring Grants and Conservation Values”, paragraph “IV”, third and fourth paragraphs]

ESSENTIAL PROVISIONS OF CONSERVATION EASEMENTS

[Except as noted below, this is Conservancy-specific language. It is derived from and required by the Conservancy enabling legislation, PRC Section 31116(c), and/or by the

language of most recent bond act appropriations to the Conservancy] The deed of conservation easement for any acquisition funded by the Conservancy should include the following essential provisions:

1. The deed of conservation easement shall contain language that prohibits its amendment, transfer or use as security for any debt, without the approval of the Executive Officer. (The Executive Officer shall approve any such amendment, transfer or use only if the acquisition purposes and conservation values would not be impaired as a result.) [This imposes the Conservancy-specific requirement of approval for an easement amendment and for use of the easement as security, but also sets forth the requirement contained in WCB Policy, "Easement Transfers and Extinguishment, paragraph "I" for approval of easement transfer]
2. No use of property subject to the conservation easement that is inconsistent with the acquisition purposes shall be permitted.
3. The conservation easement shall continue as a servitude running in perpetuity with the real property. (There shall be no provision in a conservation easement pursuant to which the landowner and the easement holder may voluntarily extinguish the conservation easement. Conservation easements whether in whole or in part, may only be extinguished through appropriate legal proceedings (e.g., eminent domain).) [This is parallel to the requirement contained in WCB Policy, "Easement Transfers and Extinguishment, paragraph "II" that prohibits voluntary termination of the easement]
4. If all or part of the property subject to the conservation easement is taken in the exercise of eminent domain, and if the grantee is entitled to receive any proceeds, whether by agreement or court order, for the public taking of the conservation easement, the grantee shall provide to the Conservancy a share of the proceeds proportionate to the Conservancy's contribution towards the purchase price of the conservation easement.
5. If the easement holder should abandon the conservation easement or cease to exist (without first transferring its interest to another entity qualified to hold conservation easements and approved by the Executive Officer), or if any of the essential terms above are violated, then all of the easement holder's right, title and interest in the conservation easement shall automatically vest in the State of California for the benefit of the Conservancy or its successor, upon recordation of a certificate of acceptance of the conservation easement following approval by the Conservancy and the Department of General Services and/or the State Public Works Board, if required by law. However, the State, through the Executive Officer of the Conservancy, or its successor, may designate another public agency or a nonprofit organization to accept the right, title and interest, in which case vesting shall be in that agency or organization rather than in the State. [This is the mechanism, specified by PRC Section 31116(c) and by most of the recent appropriations to the Conservancy, by which the Conservancy must enforce an easement violation. It is

an alternative, but equivalent and effective enforcement mechanism, to the third party enforcement remedy required by WCB Policy “Default and Remedies”]

Wildlife Conservation Board
Policies Governing
Grant Agreements and Conservation Easements

IMPLEMENTATION AND REVIEW OF POLICIES

It is the policy of the Wildlife Conservation Board that:

The Wildlife Conservation Board (WCB) shall establish and regularly review policies to ensure public confidence and accountability in grant agreements and conservation easements purchased with grant funds approved by the WCB. Exceptions to these policies are to be approved by the WCB.

Adopted: 08/17/06.

GRANT AGREEMENTS

It is the policy of the Wildlife Conservation Board that:

Staff shall develop standard grant agreements designed to allocate fiscal resources and facilitate the completion of projects. Grant agreements shall be consistent with the policies established by the WCB and clearly state the purposes of the conservation effort. The defined purposes must, at a minimum, articulate and be consistent with the purposes and requirements of the funding source(s) used to pay for the conservation effort and identify the resources and conservation values to be protected. The defined purposes of the grant must also be included in the appropriate conveyance documents (deed or conservation easement).

Adopted: 08/17/06.

RETENTION OF DOCUMENTS

It is the policy of the Wildlife Conservation Board that:

Approved appraisals, conformed copies of recorded conveyance documents, title reports and title policies, baseline conditions reports, transaction documents, management plans, and monitoring reports, as applicable, shall be provided to the WCB and retained in the WCB offices.

Adopted: 08/17/06.

BASELINE CONDITIONS REPORT

It is the policy of the Wildlife Conservation Board that:

Prior to the close of escrow for the acquisition of a conservation easement purchased with funds approved by the WCB, WCB shall have approved documentation providing detailed information on the condition of the property to be protected. The documentation (Baseline Conditions Report) shall be tailored to the purposes of the grant and the specific conservation values to be protected by the conservation easement. Descriptions of the condition of the property and conservation values should be sufficiently detailed to allow for meaningful future comparisons.

The Baseline Conditions Report must be completed, signed, and certified by the landowner(s) and the grantee by the close of escrow. The certification must confirm that the Baseline Conditions Report is a current and accurate description and representation of the property, the health of its resources and conservation values as of the closing.

The Baseline Conditions Report shall provide a narrative that characterizes the overall general condition of the conservation values protected by the conservation easement. For purposes of baseline documentation, the report must provide descriptions that are clearly defined and sufficiently detailed to allow for meaningful future comparisons and must: (a) describe and document the features and characteristics of the property in relation to the purposes, conservation values, and terms of the conservation easement at the time the conservation easement is granted; (b) describe and document the conservation values and resources to be protected by the conservation easement; (c) contain all information necessary for the grantee to administer, monitor and enforce the conservation easement; and (d) include a copy of the recorded conservation easement. The grant agreement shall include minimum requirements for the content of a Baseline Conditions Report.

Adopted: 08/17/06.

MONITORING GRANTS AND CONSERVATION EASEMENTS

It is the policy of the Wildlife Conservation Board that:

- I. Compliance monitoring shall assess compliance with the terms of the conservation easement and grant agreement and note any changes to the property as compared to the Baseline Conditions Report and the prior monitoring report.
- II. Prior to the close of escrow for the acquisition of a conservation easement purchased with funds approved by the WCB, WCB shall have approved an individualized monitoring protocol for the property to be protected. Using the Baseline Conditions Report as a benchmark, the monitoring protocol should be adaptive and address the purposes, frequency, timing and methods of monitoring the property to be carried out by the grant recipient (grantee). The monitoring protocol is the framework that will guide the preparation for and implementation of the grantee's monitoring of the conservation easement.
- III. The monitoring protocol must be tailored to address the purposes, terms and conditions of the conservation easement and the purposes of grant. The grant agreement shall include minimum requirements for a monitoring protocol and describe a process for amending the protocol as necessary, over time.
- IV. All grant agreements shall require the grantee to monitor land protected with a conservation easement purchased with funds allocated by the WCB. The grantee shall monitor the property at least annually to assess compliance with the terms and conditions of the conservation easement, as well as whether the purposes of the conservation easement and the grant agreement are being met. The grantee shall provide a written report of its monitoring activities and the results of such monitoring to the WCB in accordance with the approved monitoring protocol. The monitoring report shall document and describe the monitoring activities in a manner that demonstrates the monitoring was conducted in accordance with the monitoring protocol approved by the WCB.
- V. At the request of the WCB, not less than once, in any period of three calendar years, the grantee shall arrange for the WCB to access the protected property to assess compliance with the terms, covenants and conditions of the grant agreement. To the extent possible, such visits will be scheduled at the time of the grantee's annual monitoring visit.

Adopted: 08/17/06.

EASEMENT TRANSFERS AND EXTINGUISHMENT

It is the policy of the Wildlife Conservation Board that:

- I. The grant agreement shall contain language that requires WCB to approve the transfer of any conservation easement.

- II. The landowner and the easement holder cannot voluntarily extinguish the conservation easement. Conservation easements whether in whole or in part, can only be extinguished through appropriate legal proceedings (e.g., eminent domain).

Adopted: 08/17/06.

DEFAULT AND REMEDIES

It is the policy of the Wildlife Conservation Board that:

Grant agreements are to include remedies, which the WCB may exercise if any essential term or condition of the agreement is violated. Remedies must include, but are not to be limited to, the right to seek specific performance of the grant agreement and the right to require the Grantee to transfer its interest in the conservation easement to the state or a qualified third party, as the WCB may elect.

Adopted: 08/17/06.



February 3, 2006

TO: Coastal Conservancy

FROM: Steve Horn
Deputy Executive Officer

**SUBJECT: Executive Officer's Report:
Conservancy Easement Standards and Practices**

At the December 2005 meeting the Conservancy requested a discussion of the contents of conservation easements employed by and/or funded by the Conservancy pursuant to Board authorizations. This memo is intended to initiate that discussion by providing information on current Conservancy practices.

In general, the Conservancy staff believes that the grant agreement and conservation easement forms that we currently employ provide a high degree of assurance that the State will be able to enforce the terms of its agreements with easement-holders and landowners. The specific terms of conservation easements may vary with each property, but all of these easements will have some basic components as described below.

Purposes of Conservation Easements and Grant Agreements

The discussion should involve both conservation easements and Conservancy grant agreements because these documents function together where a project is being carried out by another organization using Conservancy funds.

Through its grant agreements and through conservation easements funded by those grants, the Conservancy assures that the projects that it authorizes will comply with the requirements of Division 21 of the Public Resources Code and with other State and federal statutes, administrative guidelines and procedures. The Conservancy has developed the form and content of its grant agreements

over its thirty-year history, modifying the “standard” form of these documents many times in response to new laws, changing procedures of other agencies, and the lessons of experience. Conservation easements have been produced by the Conservancy itself for dozens of direct acquisitions, and Conservancy staff members have reviewed and critiqued the easements proposed by many other agencies.

Both easements and grant agreements are enforceable legal instruments intended to protect the public interest and to achieve specific public purposes. Much of the content of the grant agreements is directed at minimizing risks to the State’s interests through provisions including controls over the disbursement of funds, express limitations on tort liabilities, control over assignments or delegations of responsibility to third parties, rights of project inspection, financial auditing and early termination of the grant agreement. Much of the content of conservation easements describes the purposes intended to be achieved and the ways in which the landowner and the easement-holder will act in accord with those purposes. The property-interest rights and obligations of the landowner and the easement-holder, together with the contractual rights and obligations of the (grantee) easement-holder and the Conservancy, assure the public that the conservation protection that has been purchased will have a reasonable likelihood of permanence.

Basic Conservation Easement Components

Conservation easements used or approved by the Conservancy include the following four components:

1. Statement of Conservation Purposes: what are the conservation values to be protected, and what would be the public significance of protecting them?
2. Description of Specific Restrictions and Rights: what rights are being purchased by the easement-holder, and what rights are being retained by the landowner?
3. Compliance Monitoring: what are the rights and responsibilities of the landowner and the easement-holder in administering compliance with the purposes and specific restrictions of the easement?
4. Enforcement: what are the procedures to remedy conditions of noncompliance?

The complete easement document also includes a variety of clauses that describe in detail the mechanics of making the easement work, including provisions for: the amendment, extinguishment or transfer of the easement; the interaction between

the easement and other existing or future property interests; the formal notification procedures between the parties; the mutual understandings with respect to relevant provisions of law; and so forth. Depending upon the purpose of the easement, there may be detailed requirements concerning continuing economic activity by the landowner, such as management plans for logging or intensive agriculture.

Given these basic components, however, each conservation easement will be “unique” - - it must be tailored to the physical/administrative conditions of a specific site and to the specific purposes of the public for that site, and it must be negotiated to agreement with a landowner.

Working with Conservation Partners

The conservation easement projects funded by the Conservancy usually involve partnerships with local governments, other State agencies and/or nonprofit land trusts. Most of these organizations have experience with conservation easements and preferred ways of drafting these documents. While there is generally agreement concerning the necessary contents of conservation easements (as outlined above), the “standard” legal phrasing often varies from organization to organization. Each easement is also site-specific and consequently somewhat unique. To create a satisfactory product, in every easement project the Conservancy legal staff works to merge our forms of agreement with those of our partners. This process takes some time but it is probably not avoidable if we are to get the benefits of these voluntary conservation partnerships. It is also by this iterative process that we are able to draw upon the experiences of other agencies and thus improve our own standards.

Some of the influences that come from our conservation partners:

1. A nonprofit land trust is frequently the holder of a conservation easement and consequently the party responsible for ongoing interaction with the landowner. It follows that in creating the easement document, nonprofits are often concerned with those parts of the easement that detail the rights and responsibilities of the underlying private landowner and that specify the kinds of active oversight that will be expected of the easement-holder.
2. Other State agencies are often, like the Conservancy, in the role of funding the acquisition of easement rights by third parties - - nonprofits or local government agencies. They are concerned with clarifying the enforcement mechanisms that will protect the State’s investment, and with specifying the role of State employees in monitoring compliance with the easement terms.

Conservancy Grants for Acquisition of Conservation Easements

The Conservancy is authorized to provide grants to public agencies and nonprofit organization for the acquisition of interests in land, including conservation easements. Under provisions of Division 21 of the Public Resources Code and appropriations of funds to the Conservancy in annual budget acts, the Conservancy is charged to specify essential terms and conditions of a grant and to provide for a “reversionary” interest in the State if any of these essential terms and conditions are violated. For example, Public Resources Code Section 31116 (b) requires, in the case of a grant to a nonprofit organization for land acquisition, that the purchase price not exceed fair market value of the interest acquired; that the Conservancy approve the terms and conditions under which the interest is acquired; that the interest may not be transferred or used as security for a debt without Conservancy approval; and that upon violation of any essential term or condition, title to all interest acquired with state funds immediately vest in the State. Conservancy staff ensures that all essential terms and conditions of a land-acquisition grant are specified in the grant agreement and in recorded documents that provide for this vesting in the event of a violation. In the case of conservation easements, this language is typically included within the body of the easement document. The Conservancy’s right to take title to the easement, or to designate another public agency or nonprofit organization to do so, can be exercised upon violation of any of the essential terms and conditions specified in section 31116(b) or upon violation of a material provision of the conservation easement, in the event the easement-holder fails to enforce or correct the violation itself.

Continuing Improvement

The Conservancy staff is active in efforts to improve the effectiveness of conservation easements and grant agreements. Our nonprofit and public agency partners are also trying to do so.

Nonprofit land trusts have joined together to develop appropriate standards for creating and managing conservation easements. In 2004, following several years of committee work, the national group that represents more than 1,500 land trusts, the Land Trust Alliance (LTA) based in Washington, D.C., promulgated its “Standards and Practices” guidelines. In part, those guidelines articulate how conservation easement transactions should be structured and how the nonprofit easement-holder should conduct its oversight. The principal purposes of these standards are to enable the nonprofits to assure landowners, donors and the Internal Revenue Service that the charitable purposes of the conservation easements will be

achieved, and to assure themselves that courts will enforce these permanent restrictions.

The LTA conducts many training courses for nonprofits in order to facilitate these “best practices”. The standards recommended by the LTA for conservation easements and easement-holding nonprofits include many of same requisites that characterize Conservancy transactions: clear statements of conservation purposes; “baseline” studies that document the conservation values; easement stewardship plans that include regular monitoring; clarification of the responsibilities and reserved rights of the underlying landowners; and specific enforcement procedures. The LTA has recently called for all land trusts to verify their intention and ability to conduct transactions according to these standards through a process of peer-review and accreditation.

State agencies have worked individually and together to improve our “forms” for both grants and easements, in response to the requirements of specific projects and in response to external pressures. As the number of these conservation projects has increased following public approval of bond acts in 2000 and 2002, this greater public profile has resulted in greater attention and scrutiny from the press, the legislature, academic institutions, conservation organizations, and the public. The greater number of these projects, and the larger number of multi-agency projects, has provided more opportunities for discussion among the legal and project staff members of the several conservancies, the Wildlife Conservation Board, the Department of Conservation, State Parks, etc.. The Conservancy staff is in on-going discussion with our colleagues concerning these matters.

There is not now any bill introduced or administrative mandate proposed that would require changes in Conservancy grant agreements and/or the conservation easements that are funded by them. We will report back to Board concerning any proposed changes that would be a substantial shift from existing practice.