

## WORKING FOREST CONSERVATION EASEMENT PROVISION FOR HIGH-QUALITY FORESTS

### Section **X**. Sustainable Forestry Provision

Grantor and Holder agree that sustainable forestry practices and sustainable harvesting will be permitted on the Easement Property subject to and in accordance with the principles, purposes, goals, guidelines, limitations, restrictions, requirements, and prohibitions set forth in this Conservation Easement and this section. Any violation of the terms and provisions of this section shall be remedied pursuant to the provisions set forth in Holder's Remedies in subsection X.8 and in Conservation Easement section **INSERT sec. #**.

This Forestry Provision is applicable to situations where the primary objective of Grantor and Holder is to protect the ecological and open space values of a high-quality forested area. A different type of forestry provision may be sufficient for protecting and harvesting forests of lower quality or where protection of ecological values is secondary to economic gain.

#### X.1 Definitions

- X.1.a. "Certified Forester" means a forester who has completed the Society of American Foresters (SAF) Certified Forester program and has received professional certification as a Certified Forester by the SAF.
- X.1.b. "Community" means a group of plants and animals living and interacting with one another in a specific region, ecosystem, or geographic location under relatively similar environmental conditions.
- X.1.c. "Equivalent" forester means (1) a full member of the Association of Consulting Foresters of America; (2) a forester possessing a B.S. degree in Forestry from an approved college and 5 years of experience managing a forestry operation certified by a recognized green certification program (Forest Stewardship Council, including the SmartWood program, Sustainable Forestry Initiative, Programme for the Endorsement of Forest Certification Schemes, Canadian Standards Association, or an equivalent program pre-approved by Holder); or (3) a forester with a B.S. degree in Forestry from an approved college and certified by a recognized green certification program.
- X.1.d. "Harvest" or "Harvesting" means the cutting, chopping, felling, breaking, or uprooting of one or more living or dead trees, or the removal of any part of a tree from its natural location on the Easement Property.
- X.1.e. "Mature/Overmature forest" means a late-successional, uneven-aged forest characterized and typified by structural diversity, overstory trees at or near full biological development potential, and trees in various stages of die-back and decay.
- X.1.f. "Marketable harvest" means any harvest not solely for personal use.
- X.1.g. "Native" means a species that has lived in a particular region, ecosystem, or geographic location for a long period of time such that it has co-evolved with its associates (animals, plants, fungi, and bacteria), and which was not introduced to the region, ecosystem, or geographic location by humans within the past two-hundred (200) years.

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- X.1.h. “Natural” means in the absence of active human management or intervention, regardless of past management or intervention on the Easement Property or management, modification, or intervention on surrounding properties.
- X.1.i. “Personal use (harvest)” means (a harvest) for the non-commercial use of the specified party and specifically excludes selling or bartering of wood to other parties, use of portable saw mills or other forms of manufacturing, and use of mechanized harvesting tools other than a chain saw.
- X.1.j. “Tree” means a woody perennial plant typically with secondary branches supported on a single main stem or trunk, which generally grows more than 10 feet tall if not altered by human intervention.
- X.1.k. “Uneven-aged forest” means the retention of three or more distinct age classes in a forest.

### **X.2 Forest Inventory**

- X.2.a. Unless Holder agrees to arrange for an Inventory or to use a completed Inventory, Grantor agrees to arrange for an Inventory of the vegetation and selected ecological characteristics of the Easement Property in conjunction with the preparation and planning prior to the first proposed marketable harvest on the Easement Property.
- X.2.b. Unless Holder agrees to arrange for an update of the Inventory, Grantor agrees to arrange for the update of the Inventory in conjunction with the preparation and planning for each subsequent marketable harvest on the Easement Property that occurs at least twenty (20) years after the previous Inventory or update, to incorporate new information and to document major changes to the forest such as impacts of fire or blowdown. More frequent updates shall be completed if disturbance significantly changes the vegetation or ecological characteristics of the Easement Property.
- X.2.c. The Inventory and any updates to the Inventory shall be planned and supervised by a Certified Forester or Equivalent.
- X.2.d. All costs and expenses associated with the production of the Inventory and any updates to the Inventory shall be the responsibility of Grantor, unless Holder voluntarily agrees to assume or share the costs and expenses of the Inventory or update.
- X.2.e. In producing the Inventory or update, the Certified Forester or Equivalent should consult existing databases. The Certified Forester or Equivalent may rely on reasonable existing documentation, databases, and indicators where direct observation of an item is not practicable or the information has recently been gathered.
- X.2.f. The Inventory *shall* contain at least the following information:
  - 1) a description of elevation and topography across the Easement Property;
  - 2) a description of soils, soil fertility, soil moisture, and soil erosion potential across the Easement Property;
  - 3) the main species of overstory and understory vegetation present on the Easement Property;
  - 4) an estimate of the total density and volume of overstory trees, classified by age-class and species, on the Easement Property;
  - 5) an estimate of existing forest condition and health, and capacity for natural regeneration;

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- 6) an estimate of the total combined density of standing dead trees (snags), den trees, cavity trees, and downed logs on the Easement Property;
- 7) a description and estimated acreage of the habitat types on the Easement Property, using a comprehensive habitat classification scheme that accounts for a variety of wildlife orders and species and is reasonably determined by the Certified Forester or Equivalent to be scientifically credible;
- 8) a list of the common mammal, amphibian, reptile, bird, and fish species likely to be present on the Easement Property, based on observations or on documented relationships between species occurrence and habitat type as assembled by the Indiana Natural Heritage Data Center, the Indiana Gap Analysis Project, the Indiana Comprehensive Wildlife Strategy program, or other equivalent sources reasonably determined by the Certified Forester or Equivalent to be scientifically credible;
- 9) a list of species populations and natural communities on the Easement Property that are classified as rare, threatened, endangered, candidates for listing, critically imperiled, imperiled, of special concern, or significant, as defined and documented by the Indiana Natural Heritage Data Center, the Indiana Gap Analysis Project, the Indiana Comprehensive Wildlife Strategy program, the Indiana Department of Natural Resources, the U.S. Fish and Wildlife Service, or other equivalent sources reasonably determined by the Certified Forester or Equivalent to be scientifically credible;
- 10) the locations of native plant or animal individuals, native species populations, natural communities or habitats, and natural features on the Easement Property that are unique, fragile, or locally or regionally uncommon, as defined and documented by any information source reasonably determined by the Certified Forester or Equivalent to be scientifically credible;
- 11) the locations of streams, lakes, ponds, wetlands, floodplains, seeps, springs, vernal pools, headwaters, sinkholes, aquifers, and other water sources on the Easement Property;
- 12) the history of land use and management on the Easement Property, if records of past use and management are reasonably available;
- 13) the mapped locations of roads on the Easement Property;

The Inventory *should* contain the following additional information:

- 14) an estimate of the abundance of non-native invasive plant species on the Easement Property;
- 15) the locations of concentrations of food sources for wildlife on the Easement Property;
- 16) the locations of species populations and natural communities on the Easement Property that are classified as rare, threatened, endangered, candidates for listing, critically imperiled, imperiled, of special concern, or significant, as defined and documented by the Indiana Natural Heritage Data Center, the Indiana Gap Analysis Project, the Indiana Comprehensive Wildlife Strategy program, the Indiana Department of Natural Resources, the U.S. Fish and Wildlife Service, or other equivalent sources reasonably determined by the Certified Forester or Equivalent to be scientifically credible;
- 17) the ownership, zoning, and protection status of adjoining properties;
- 18) a map showing the location of the Easement Property relative to other forests within the township.

**X.3 Controlling Management Principles, Reservations, Limitations and Requirements**

*Principles*

- X.3.a. Forestry conducted under this Conservation Easement agreement shall be designed to be ecologically sustainable. “Ecologically sustainable” in the context of this Conservation Easement refers primarily to sustaining the ecological structure, functions, processes, and complexity of a forest ecosystem, and not solely to sustainability of harvest yield.
- X.3.b. Forestry activities shall conserve relatively natural habitat of fish, wildlife, and plants, preserve scenic open space for the benefit of the general public, and preserve significant conservation interests on the Easement Property.
- X.3.c. Protecting the conservation purposes of the Easement Property requires distinctive restrictions on harvest not required in other forestry contexts.
- X.3.d. When determining the management actions that are reasonably likely to be consistent with and promote the principles, reservations, limitations, and requirements set forth in this Conservation Easement and specifically this Forestry Provision, Grantor, Holder, and Certified Forester or Equivalent shall apply the “precautionary principle” and build a margin of safety into the management plans to account for uncertainty of outcome and risk of ecological harm.

*Reservations*

- X.3.e. Grantor or assigns expressly reserve the right and are expressly permitted to harvest a maximum of **INSERT #** cords (1 cord = 2.55 m<sup>3</sup>) of wood per year for personal use without a Forest Inventory or Forestry Plan in a manner not incompatible with controlling management principles, limitations and requirements of this subsection.
- X.3.f. Grantor expressly reserves the right and is expressly permitted to use reasonable procedures not incompatible with the controlling principles, limitations and requirements of this Forestry Provision to prevent or control disturbances such as wildfires, disease, invasive species, and insect pests occurring on the Easement Property.
- X.3.g. Although Grantor is permitted under X.3.f. to prevent and control disturbances, Grantor is not obligated and has no affirmative duty to actively manage or intervene to maintain or improve conservation values of the Easement Property in the face of disturbances that degrade desired conservation values.
- X.3.h. Grantor shall not, however, propose, agree to, or permit any activity that reduces or is likely to reduce desired conservation values of the Easement Property as they exist at the time the Easement is recorded. For example, Grantor is permitted but is not obligated to prevent and control the establishment of non-native invasive species on the Easement Property as a whole, but Grantor shall not propose, agree to, or permit forestry practices that substantially increase the establishment or growth of non-native invasive species unless required by the terms of this Easement.

*Limitations and Requirements*

- X.3.i. Any forestry practices, including both marketable and personal-use harvesting, shall be conducted on the Easement Property in a manner that:
  - 1) **ALTERNATIVE 1:** maintains or restores on the Easement Property the structural and functional characteristics and appearance of a mature/overmature mixed hardwood forest given the natural soil, elevation, topography, climate, geology, moisture, disturbance, and landscape conditions of the property; **ALTERNATIVE 2:** maintains or restores on the

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Easement Property a mixed hardwood forest with multiple seral stages including early-successional and mature/overmature components, to encourage a high diversity of habitats across the forest given the natural soil, elevation, topography, climate, geology, moisture, disturbance, and landscape conditions of the property;

- 2) maintains or restores species populations and natural communities on the Easement Property that are classified as rare, threatened, endangered, candidates for listing, critically imperiled, imperiled, of special concern, or significant and that are documented in the Forest Inventory and/or Conservation Easement section INSERT sec. #;
  - 3) maintains or restores native plant or animal individuals, native species populations, natural communities or habitats, and natural features on the Easement Property that are unique, fragile, or locally or regionally uncommon and that are documented in the Forest Inventory and/or Conservation Easement section INSERT sec. #;
  - 4) maintains or restores significant sources of shelter and food for native wildlife (which includes non-game and game fish, amphibians, reptiles, birds, mammals, and invertebrates), including but not limited to standing dead trees (snags), den trees, cavity trees, hibernacula, downed logs, caves, rock outcroppings, and concentrations of fruiting vegetation, that are likely to be used by native wildlife, that naturally occur on the Easement Property in a forest condition specified in 1) above, and that are documented or addressed in the Forest Inventory and/or Conservation Easement section INSERT sec. #;
  - 5) maintains or restores the presence and water quality of streams, lakes, ponds, wetlands, floodplains, seeps, springs, vernal pools, headwaters, sinkholes, aquifers, and other water sources on the Easement Property that are documented in the Forest Inventory and/or Conservation Easement section INSERT sec. #;
  - 6) maintains or restores soils, nutrients, organic matter, and cycles of nutrients and organic matter that naturally occur on the Easement Property in a forest condition specified in 1) above.
- X.3.j. Grantor shall not propose or agree to, and to the extent practicable shall avoid and not permit, marketable or personal-use harvesting of vegetation within riparian management zones. The widths of riparian management zones specified in the current state Best Management Practices (“BMPs”) shall be the minimum widths protected.
- X.3.k. All forestry practices including marketable and personal-use harvesting activities shall be carried out in accordance with current state BMPs and all applicable local and state laws. It is expressly acknowledged that state BMPs, although a necessary component of a forestry management plan, are not adequate or sufficient by themselves to constitute sustainable forestry or to protect the conservation purposes of the Easement Property.
- X.3.l. All marketable harvesting activities shall be carried out in accordance with the Forestry Plan discussed in subsection X.4. Only those trees identified in the Forestry Plan and marked under the supervision of a Certified Forester or Equivalent may be harvested in any marketable harvest, except for unmarked trees incidentally and unavoidably damaged, broken, uprooted, or felled during harvest operations.

### **X.4 Sustainable Forestry Plan**

- X.4.a. Grantor agrees to arrange for the production of a written Forestry Plan that is consistent with this Conservation Easement and specifically this Forestry Provision, in conjunction with the preparation and planning prior to the first proposed marketable harvest on the Easement Property.

- X.4.b. Grantor agrees to arrange for the update of the Forestry Plan in conjunction with the preparation and planning for each subsequent marketable harvest on the Easement Property that occurs at least twenty (20) years after the previous Forestry Plan or update, to incorporate new information and changes to the forest and landscape. Holder and Grantor shall review and discuss the Forestry Plan and any updates from time to time but at least every ten (10) years.
- X.4.c. The Forestry Plan and any updates to the Forestry Plan shall be developed and written by a Certified Forester or Equivalent.
- X.4.d. Except as provided in subsection X.4.e., all costs and expenses associated with the production of the Forestry Plan and any updates to the Forestry Plan shall be the responsibility of Grantor, unless Holder voluntarily agrees to share the costs and expenses of the Forestry Plan or update.
- X.4.e. Holder may for good cause require at any time that the Forestry Plan be updated, but in such case where Holder requests an update but an update is not due according to subsection X.4.b. Holder shall share the costs and expenses of the update equally with Grantor.
- X.4.f. The Forestry Plan and supporting documents shall contain and reasonably contain at least the following information:
- 1) the choice of desired forest condition as set forth in subsection X.3;
  - 2) the long-term goals and short-term objectives of management and harvest, and the means for achieving them, compatible with the desired forest condition;
  - 3) all of the information compiled in the Forest Inventory;
  - 4) a description and rationale for monitoring and responses to disturbances (*e.g.*, wildfire, blowdown, disease, invasive species, insect damage), including salvage operations;
  - 5) a description and rationale for chosen harvesting methods and equipment, locations of trees to be harvested, species and age-classes of trees to be harvested, number and volume of trees to be harvested, harvesting timelines, and frequency of harvest;
  - 6) if clear cutting is to be used, specification and rationale for the maximum size of openings and amount of edge habitat;
  - 7) a description of the application of current state BMPs to the Easement Property, including but not limited to issues of road and trail access to harvest sites, stream crossings, riparian zones and buffers, log landings, waste and hazardous materials, erosion control measures, and tree planting and regeneration;
  - 8) a description and rationale for clean-up, preparation, treatment, pesticide and herbicide use, artificial regeneration, and invasive species control within harvested areas;
  - 9) a description and rationale for monitoring and supervision of forestry practices and harvest operations for compliance with the Forestry Plan and the controlling management principles, limitations and requirements set forth in subsection X.3;
  - 10) a description and rationale for monitoring harvested sites at least every ten (10) years for tree regeneration and harvesting impacts.

## **X.5 Review and Approval of Forestry Plan**

- X.5.a. Each initial, updated, or revised Forestry Plan shall be reviewed by Holder.

- X.5.b. No marketable harvesting may occur on the Easement Property unless and until Holder approves the Forestry Plan or update.
- X.5.c. The person(s) reviewing the Forestry Plan shall make a recommendation to Holder to approve or deny the Plan. Holder shall make the ultimate decision to approve or deny the Plan as presented. Holder shall not unreasonably withhold approval of a Forestry Plan that is consistent with this Conservation Easement and this Forestry Provision.
- X.5.d. If Holder declines to approve the Forestry Plan, Holder shall notify Grantor in writing of the rejection and the reasons for the rejection. Grantor may present to Holder for evaluation and approval one or more revised Forestry Plans addressing the shortcomings of the rejected Plan. If necessary, Holder shall work with Grantor to develop an acceptable Plan.

**X.6 Timber Marking and Sale**

- X.6.a. A Certified Forester or Equivalent shall manage and supervise the marking of trees identified in the Forestry Plan to be harvested during the next marketable harvest.
- X.6.b. A Certified Forester or Equivalent shall review and evaluate the timber sale.
- X.6.c. The timber buyer must be licensed as required by applicable law and the sale must adhere to the requirements of all applicable laws.
- X.6.d. The timber sale agreement shall be in writing and signed by Grantor and the timber buyer. The timber sale agreement shall expressly incorporate the Forestry Plan, and the Forestry Plan shall be attached to the agreement.
- X.6.e. The timber sale agreement shall require that the supervisor of the crew harvesting the marked timber be familiar with the Forestry Plan and trained in the current state BMPs.
- X.6.f. Holder assumes no responsibility for any costs and expenses associated with the timber marking and timber sale.

**X.7 Implementation of Forestry Plan**

- X.7.a. Grantor must notify Holder in writing not less than thirty (30) days before any marketable harvest on the Easement Property, to afford Holder an opportunity to monitor the harvesting activities. This notice will ensure compliance with Treasury Regulations which require that, to be eligible for a federal tax deduction, Grantor must agree to notify Holder, in writing, before exercising any reserved right on the Easement Property the exercise of which may impair the conservation interests associated with the Property.
- X.7.b. A Certified Forester or Equivalent shall monitor and supervise the marketable harvest of trees as well as pre-harvest preparations and post-harvest activities such as clean-up, site preparation and treatment, pesticide and herbicide use, artificial regeneration, and invasive species control within harvested areas for consistency with the Forestry Plan and the controlling management principles, limitations and requirements set forth in subsection X.3.
- X.7.c. Grantor agrees to arrange for the production of a Monitoring Report at least every ten (10) years which evaluates the forest for tree regeneration and harvesting impacts and evaluates whether the principles, limitations, and requirements set forth in this Conservation Easement and specifically this Forestry Provision are being met. The Monitoring Report shall be developed and written by a Certified Forester or Equivalent and submitted to Holder for review.

- X.7.d. Holder assumes no responsibility for any costs and expenses associated with implementing the Forestry Plan.

**X.8 Holder's Remedies**

- X.8.a. If Holder determines that a violation of the terms of this Forestry Provision has occurred or is threatened, Holder shall give written notice to Grantor of such violation and demand corrective action sufficient to cure the violation and, where the violation involves injury to the Easement Property resulting from any use or activity inconsistent with this Forestry Provision, to restore or rehabilitate the portion of the Easement Property so injured in accordance with a plan approved by Holder.
- X.8.b. If Grantor fails to diligently begin curing the violation within thirty (30) days after receiving notice of violation from Holder, or fails to continue diligently to cure such violation until finally cured, Holder may bring an action in law or in equity in a court of competent jurisdiction to enforce the terms of this Forestry Provision, to enjoin the violation, ex parte as necessary, by temporary or permanent injunction, and to require the restoration of the Easement Property.
- X.8.c. Holder shall be entitled to recover damages for violation of the terms of this Forestry Provision or injury to any conservation values protected by this Easement, including, without limitation, damages for the loss of scenic, aesthetic, or environmental values.
- X.8.d. If Holder, in its discretion, determines that circumstances require immediate action to prevent or mitigate significant damage to the conservation values of the Easement Property, Holder may pursue its remedies without prior notice to Grantor or without waiting for the period provided for cure to expire.