Carbon Offsets in Conservation Easements

The Essentials for Land Trusts

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Edited by Sylvia Bates, Mary Burke, Erin Heskett, Leslie Ratley-Beach and Kelly Watkinson

Land Trust Alliance
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The Land Trust Alliance's mission is to save the places people need and love by strengthening land conservation across America.

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Cover photograph courtesy of the Pacific Forest Trust. This 2,200-acre redwood forest was the very first carbon project developed under California's offset program. The project has produced hundreds of thousands of tons of CO_2 emissions reductions (ARBOCs, or Air Resources Board Carbon Offsets) and the land trust harvests over 1,000,000 board feet of timber annually.

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Placing carbon projects on conservation easement–protected lands is in its infancy with most everyone recognizing there is much for us all to learn. Trying to capture the nuance of the agreements underlying these types of projects is also challenging because of they are complex, dynamic and evolving as new problems and solutions arise. The Land Trust Alliance believes this topic to be particularly relevant for today's landowners and land trusts, so we have published this document as a first part in a much longer conversation.

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INTRODUCTION

With the ever-increasing urgency of the climate crisis has come a growing recognition that natural climate solutions are essential to averting natural catastrophes from elevated atmospheric greenhouse gas (GHG) concentrations. Land trusts lie at a critical juncture between the goals of mitigating climate change and a broader set of conservation goals, and they offer the opportunity to make meaningful contributions to both areas simultaneously. One specific opportunity that has been gaining interest in recent years are projects that generate carbon credits (typically referred to as *carbon offsets*). While land trusts may undertake carbon offset projects that support their conservation goals on their own lands, similar types of projects on land protected by a conservation easement involves another set of considerations. For example, how should land trusts draft and administer a conservation easement on land enrolled within a carbon offset project? Land trusts and landowners need to think through these questions not only for their current projects, but also for future projects where carbon sequestration projects may be involved. How does one draft a conservation easement that remains responsive to evolving carbon markets 10, 20 or even 100 years from now?

Land trusts can benefit tremendously by having a better understanding of carbon offset projects and how they can be developed on easement-protected properties. The purpose of this document is to offer practical guidance to land trust practitioners on the latest thinking on drafting conservation easement language to (1) allow the development of carbon offset projects; and (2) convey or clarify the ownership of the carbon offsets generated by such a project. This document serves as a companion piece to the Alliance's *Carbon Markets: Are They Right for Your Land Trust?*, which provides a more holistic overview of carbon offset projects, including the differences between the voluntary and compliance markets and protocols. Carbon markets and carbon offset projects are an evolving area. This document aims to provide the best possible guidance currently known and will be periodically updated to reflect changes and developments.

As with any conservation easement issue, practitioners should consult best practices and guidelines, specifically, *Land Trust Standards and Practices* (the Standards) and *Amending Conservation Easements: Evolving Practices and Legal Principles* when drafting or amending a conservation easement. Of course, land trusts should always consult independent legal advice when drafting any type of conservation easement with special consideration for the on-the-ground difficulty of stewardship administration and the potential for complex easement enforcement litigation.

WHAT IS A CARBON OFFSET PROJECT?

A carbon offset project is an action or set of actions undertaken to lower atmospheric concentrations of GHGs, typically carbon dioxide (CO_2). Natural climate solutions include carbon offset projects that

involve land management changes and typically sequester (that is, absorb) or avoid the loss of carbon on the land and/or lower or avoid emission of greenhouse gases, such as carbon dioxide, methane or nitrous oxide. Carbon offset projects are most often developed with an intent to generate financial benefits that flow from participating in the carbon offset market.

A carbon offset market is a type of ecosystem services market where a buyer, looking to offset their emissions, purchases GHG emissions reduction credits (carbon credits) from sellers who generate carbon credits through resource management activities that are above and beyond "business as usual." Such activities include improvements to forest management, reforestation, avoiding the conversion of grassland to agricultural use and more. Carbon credits are issued based on the GHG emissions reductions[1] calculated for a project. Furthermore, carbon credits can either be issued after emissions reductions have been achieved (*ex post*) or in anticipation of emissions reductions that will be achieved in the future (*ex ante*). Carbon credits are typically expressed in metric tons of carbon dioxide equivalent (MT CO2e), where one carbon credit equals one metric ton of CO2e reduced or removed (or the emission avoided in the first place) from the atmosphere. Crediting programs develop rules, known as *project protocols* or *methodologies,*[2] that carbon offset projects must follow to generate carbon credits. The protocols address eligibility, quantification, monitoring, reporting and verification, and they vary by project type and by carbon-crediting program. While protocols specify the project rules, crediting programs provide the overall governance around protocol development and administration, helping to ensure the environmental and financial integrity of the credits they issue by following internationally accepted principles for carbon markets. Among those principles (outlined in more detail in *Carbon Markets: Are They Right for Your Land Trust?*), two are especially relevant to how conservation easements relate to carbon offset projects:

- Additionality. Project activities must reduce or remove emissions beyond what likely would have occurred in a baseline or "business-as-usual" scenario. The carbon offset project activity likely would not have occurred without the financial incentive for carbon benefits.

- Permanence. GHG reductions or removals must effectively remain out of the atmosphere permanently. For sequestration projects, where there is a possibility that the carbon sequestered may be reversed or emitted back into the atmosphere, crediting programs must define a length of time that represents permanence and there must be mechanisms in place to account and compensate for any reversals.

[1] Throughout this document, both GHG emissions reductions and GHG removals (e.g., sequestration of carbon) will be referred to as *emissions reductions*.

[2] This document will generally use *protocol* to refer to crediting program rules unless a particular program uses the term *methodology*.

Carbon-crediting programs provide a number of functions in the marketplace, including the following:

- Developing, maintaining and interpreting protocols
- Issuing carbon credits to projects that follow approved protocols
- Tracking credit ownership

Carbon program credits are issued within the framework of a carbon registry, which means the project has met program review and verification requirements and has received a batch of serialized carbon credits equal to the verified emissions reductions it achieved or is forecasted to achieve. These registries are publicly accessible and track credit issuance and any subsequent transfers to other entities and/or retirements.[3] The carbon registries most active in the United States include Climate Action Reserve (CAR), American Carbon Registry (ACR) and Verra,[4] all of which operate their own carbon registry programs for "voluntary" emissions reductions and are also approved offset project registries within California's regulatory compliance cap and trade program, operated by the California Air Resources Board (CARB).

WHAT ROLE DOES A LAND TRUST PLAY?

A conservation easement grantor may assign carbon rights to a land trust as the holder of a conservation easement on a project site. This has implications for easement stewardship, project management and managing revenue generated by the carbon offset project. Sometimes the landowner retains those rights. Regardless of who holds the carbon rights, any land trust holding a conservation easement encumbering land also enrolled in a carbon offset project maintains its critical stewardship role. If a land trust assumes the responsibility for monitoring and managing the carbon rights, it must have the financial and human capacity and expertise to discharge all relevant responsibilities. If the land trust is a Terrafirma member, it should consider increasing its legal defense funding because Terrafirma is unlikely to cover legal costs or litigation regarding carbon rights as these are affirmative, rather than negative, rights. Carbon offset revenue disputes are also not likely to be covered by Terrafirma because they are likely to be business disputes. Both affirmative rights and business disputes are exclusions under any Terrafirma policy. To mitigate the risk of subsequent legal disputes with landowners, land trusts should secure unambiguous ownership of carbon rights through the conservation easement or another legally binding agreement with the landowner to avoid ambiguity over offset ownership. Such clarity will also help avoid any risk of breaching a contract with

[3] Once credits have been purchased to offset a buyer's emissions, they are retired forever, meaning that they are permanently taken off the market for circulation and marked as such in the applicable registry.
[4] Verra methodologies are not represented in this resource due to their limited use for U.S.-based projects.

third-party offset buyers who will require offset ownership to be transferred to them in exchange for the offset purchase.

Project Developers

Entities known as *project developers*, whether for-profit or nonprofit, can help land trusts navigate these and related issues. A project developer is an organization or individual that registers projects for the purpose of generating emission reductions or removals. The project developer may be the same entity as the project owner but they may also act as a technical consultant on behalf of the project owner. For more information on working with project developers, see *Carbon Markets: Are They Right for Your Land Trust?*

Protocols and Methodologies Relevant to Conservation Easements

Table 1-1 provides a list of the types of nature-based carbon offset project protocols offered by California's regulatory cap-and-trade program and by CAR and ACR registries' voluntary programs.

Table 1-1: Easement-related carbon offset projects with the greatest opportunities for land trusts.

Land Cover	California Air Resources Board Offset Program	Climate Action Reserve Offset Program	Climate Action Reserve Climate Forward Program	American Carbon Registry
Forest	• Improved forest management • Avoided conversion of forests • Reforestation	• Improved forest management • Avoided conversion of forests	• Reforestation • Mature forest management	• Improved forest management • Afforestation[5]/reforestation
Grassland		• Avoided conversion of grasslands		• Avoided conversion of grasslands
Wetland				• Restoration of California Deltaic and coastal wetlands • Restoration of degraded wetlands of the Mississippi Delta • Restoration of Pocosin wetlands

These represent the greatest opportunity for land trusts and directly involve conservation easements, either as a requirement for project eligibility or as an option that can be employed to increase the

[5] Afforestation is the establishment of a forest or stand of trees in an area where there was no previous tree cover.

amount of carbon credits issued to the project. Additional details concerning aspects related to conservation easements within each protocol are listed in Table 1-2 on page 12.

CARBON OFFSETS AND CONSERVATION EASEMENTS: KEY CONSIDERATIONS

Ownership, Valuation and Funding Issues

Carbon Credits Ownership

Who should receive the proceeds from the sale of carbon credits? To answer this question, first you must know who actually owns the carbon and the associated rights to GHG emissions reduction credits. Carbon is associated with specific resources on the land, and ownership of the carbon can be assigned to different entities, similar to other property rights. For example, the trees in a forest are generally associated with timber rights that a landowner can divest, in whole or in part, when granting a conservation easement. Yet those same timber resources contain carbon stocks that largely serve as the basis for the credits issued to a carbon offset project. If a landowner gave up certain rights pertaining to the timber without specifying a simultaneous transfer of the right to any associated carbon and/or GHG emissions reductions, the question of carbon ownership can be complex and needs to be clarified.

The resource(s) and associated carbon can be owned by the same entity or multiple entities. For example, one entity may own the land, another may own the timber rights and yet another may own the carbon rights. Different ownership configurations will impact how land trusts draft conservation easements and develop and manage carbon offset projects. In the absence of an enforceable legal agreement specifying otherwise, the owner of the resource that contains the carbon is generally considered the owner of the carbon offset project and will receive the carbon credits. Due to this complexity, it is important to understand and define who owns the resource(s) associated with the climate benefits derived from a carbon project, as well as who owns the carbon associated with the resource(s). While some protocols define such ownership, others require clear demonstration of who owns the carbon and emission reductions associated with a project (see Table 1-2).

Clarification of carbon credit ownership is also important with regard to changes in ownership that take place after a property has been enrolled in a carbon offset project. A carbon offset project typically requires committing to a certain time period during which carbon stocks are monitored and reported to the carbon-crediting program. If the underlying fee owner changes, the rights and responsibilities associated with the carbon offset project remain with the land—just as a conservation easement does. Thus, if a land trust acquires the carbon rights as part of a conservation easement

transaction, should the land change hands, the land trust maintains those carbon rights. If the landowner retains the carbon rights or, in the absence of an agreement clearly assigning carbon ownership, those rights—and any associated carbon offset project responsibilities—are transferred to the new fee owner(s).

The parties to the conservation easement must manage all of this ownership complexity and the need to enforce the rights and limit management to achieve the carbon offset project goals. A perpetual conservation easement can only go so far in managing these relationships. In many cases, liability and benefits will need to be apportioned in separate enforceable agreements among the parties.

Double Payments

To maintain the integrity of carbon offsets, it is imperative to avoid multiple emission reduction claims from an offset project—that is, paying landowners twice for the same action (the "additionality" factor). Landowners can receive compensation for granting a conservation easement, typically through tax incentives when donating a conservation easement or through direct cash payment when selling one. That compensation rewards the landowner for giving up the ability to exercise specific land use rights. Similarly, a landowner can be issued carbon credits for undertaking certain activities—or, in many cases, restricting certain activities—on their land to increase the carbon stocks or to avoid the release of carbon and other GHG emissions. For carbon offset projects involving a conservation easement, there is real potential that a landowner will be paid twice for the same action, which requires special consideration to address.

Carbon-crediting programs seek to ensure additionally and avoid double payments in two ways:

1. *By including in the carbon offset project baseline any conservation easement that was recorded more than one year prior to the establishment of the carbon offset project.* This requirement addresses additionality and ensures that the carbon offset project is not crediting the landowner for activities that are already required by an existing conservation easement. Conservation easements that are recorded more recently, typically less than one year prior to the start date of the carbon offset project, are generally treated as supporting the carbon offset project and do not affect the carbon offset's project's baseline. Carbon registries recognize that older easements lack an explicit goal of establishing or supporting a carbon offset project. A more recently recorded conservation easement can "support" a carbon offset project by including purposes and restrictions consistent with the project's goals. See the sample purposes language on page 27.

2. *By clarifying ownership of the carbon rights, including by the conservation easement funder.* Carbon credit ownership is generally attributed to the entity or entities who own or

potentially control the resources (trees, soil carbon and so forth) that are the basis for generating the carbon credits. When a landowner is compensated for relinquishing the ability to capitalize on a specific asset, whether fully or in part, ownership of the resource that was encumbered is often considered transferred to the entity that provided the compensation. In other words, the landowner cannot automatically assume they can receive compensation for encumbering an asset and then market the same asset as carbon credits in a carbon market without permission from the funder. However, if the landowner retains specific rights in the conservation easement (such as the right to sustainable forest-harvesting) and then implements a carbon offset project affecting those particular rights, the landowner may be able to claim those carbon credits attributable to those relinquished rights.

Liability

Ownership definitions are also important with respect to liability concerns relating to carbon offset project performance, especially for offset projects participating in the CARB program. Carbon-crediting programs typically have project performance requirements (for example, ensuring a project's carbon-stocking levels are maintained or increase over time) the project must fulfill. Most carbon-crediting programs limit the liability associated with satisfying such requirements to the entity explicitly registered with the program as the project owner.

The CARB program and its forest project protocol, however, expands this liability more broadly. While CARB requires a single entity with an ownership interest in the property to be responsible for fulfilling all of the reporting, monitoring and verification requirements under the protocol, it also stipulates that all "forest owners [are] ultimately responsible for all forest project commitments."[6] *Forest owner* is broadly defined to include any entity with an interest in the property or the timber, including non-governmental agency conservation easement holders and access easement holders. The forest project commitments, for which these forest owners are responsible, include purchasing replacement credits if any owner of the property intentionally removes any of the carbon stocks (for example, through a timber harvest that lowers project carbon-stocking levels). Thus, if the forest owner managing the carbon offset project fails to fully satisfy its responsibilities related to the carbon project, a conservation easement holder may be liable, regardless of whether it is receiving any economic benefits associated with the project or plays an active role in the management of the land. Further, if the landowner provides public access as part of the conservation easement and a member of the public damages the carbon stocks, the landowner and the conservation easement holder will potentially be jointly and severally liable for the project reversal.

[6] California Air Resources Board, Compliance Offset Protocol – U.S. Forest Projects, June 25, 2015.

Because a land trust may be financially responsible if a landowner fails to fulfill their responsibilities under the carbon offset project or a third party damages the carbon stocks, a land trust should consider asking all landowners during its annual monitoring if they have enrolled or intend to enroll in a CARB carbon offset project. A land trust might also consider including additional provisions in its conservation easements requiring landowners to notify the land trust if they intend to enroll in a carbon offset project and having the landowner to indemnify them for any intentional reversals.

Solutions To Establish Clear Ownership

As carbon-crediting programs have matured, solutions have emerged to address the ownership issues. In some cases, landowners and land trusts have proactively included provisions within conservation easements that clearly assign the ownership of carbon credits derived from the property. Revenue-sharing arrangements have also been included in conservation easements, allowing both the landowner and the easement holder to share the proceeds generated by the carbon project. Such revenue-sharing arrangements may also be outlined in a separate agreement, allowing the details to remain private. For examples of easement language that establish clear ownership of carbon rights, see page 31.

While landowners and land trusts have come up with their own solutions for clarifying ownership of carbon credits as they witnessed various points of contention or confusion in relation to project and credit ownership, crediting programs have also evolved over time. For example, in its most recent forest offset protocol, CAR modified its definition of *forest owner* to distinguish between multiple competing entities who may claim ownership of the forest carbon. Thus, CAR requires clear demonstration of ownership where multiple entities have legal control, helping to ensure the unambiguous ownership of credits. CAR has introduced similar requirements for its other land use-related protocols where there may be a conservation easement. See page 33 for sample easement language from CAR's avoided grassland conversion protocol that addresses this issue.

Valuation

Conservation easements associated with carbon offset projects may increase the complexity of easement appraisals because carbon can affect value. For example, appraising improved forest management projects (as defined by the protocols) is challenging because both timber value and carbon value are derived from essentially the same forest resource.

In general, sequestration of carbon, in most regions, at current prices, is unlikely to be identified as the highest and best use in forest projects because timber values and other uses typically provide for greater economic return. For grassland projects as well, landowners are often compensated for less than 100 percent of the appraised value for relinquishing their ability to produce higher-valued

agriculture products. To date, conservation easement appraisals have generally not factored in carbon value, in part owing to higher timber values and the lack of carbon-encumbered comparable properties that can be used during the appraisal process, as well as to a general lack of understanding about the impacts of carbon offset projects by appraisers.

Funding Considerations

Entities funding new conservation easements are primary stakeholders in claims to the carbon credits and are often outright owners of the credits associated with projects that they fund. In such situations, determining the allocation of the credits may require complex modeling and ultimately an agreement between the parties that may have a claim to a portion of the carbon credits generated from an offset project, including the landowner.

Funders have shown varying levels of interest in claiming carbon credits or prohibiting the development of a carbon project altogether. In some cases, funders require that any credits associated with the conservation easement be transferred to themselves or simply retired (never transacted in the marketplace) in recognition of the funder's investment. Other funders may utilize carbon revenues to fund even more transactions. In other cases, funders are content to direct their interest in carbon revenues to the landowner, the project developer or the easement holder. In such cases, ownership of the carbon rights is often specified directly in the conservation easement.

Some protocols contain explicit language to clarify how one should consider claims of carbon under a conservation easement. Table 1-2 summarizes how specific protocols address the issue of carbon credit ownership and the relationship with the funder.

Table 1-2: Management of carbon ownership within various carbon credit protocols.

Protocol	Effects of Easement Encumbrances	Potential Funding/Ownership Issues
CARB (2015) / CAR (V5.0) / ACR (V1.3) Improved Forest Management Protocols	Easement optional. Carbon credits based on increased carbon stocks resulting from dedicated management actions compared to business as usual. Potential limits to forest management at varying levels depending on easement language.	Protocols acknowledge potential for multiple claims to ownership and require carbon ownership documentation. Where conservation easements exist, agreements between interested parties outside of protocol are required to clarify treatment of credits (encumbered and non-encumbered).
CARB (2015) / CAR (V5.0) Avoided Forest Conversion Protocols	Easement required, unless land is transferred to public ownership. Easement terms must ensure perpetual forest cover. Additional encumbrances may impact current and future carbon stocks.	Protocols acknowledge potential for multiple claims to ownership and require carbon ownership documentation. Agreements between interested parties outside of protocol are required to clarify treatment of credits (encumbered and non-encumbered).

CARB (2015) / ACR (V1.1) Reforestation Protocols	Easement optional. Easement terms ensure protection of project's forest carbon stocks over the life of the project.	Protocols acknowledge potential for multiple claims to ownership and require carbon ownership documentation. Agreements between interested parties outside of protocol are required to clarify treatment of credits (encumbered and non-encumbered).
CAR (V1.0) Reforestation Forecast Methodology	Easement optional. Easement terms secure carbon-stocking levels on a temporal or perpetual basis. Projects utilizing easements are issued increased credits compared to those that do not have easements.	Ownership of carbon credits assumed to be the landowner, unless discrete and clear language provided in external agreement, including a conservation easement, that transfers ownership to funder/project developer/easement holder or other.
CAR (V1.0) Mature Forest Management Forecast Methodology	Easement required. Easement terms ensure forest cover is perpetual and that forest carbon will increase toward stocking conditions associated with mature forest conditions.	Protocol explicitly allows for payment for avoided conversion value of conservation easement but prohibits compensation for forest management encumbrances to prevent landowner from being paid twice for the same action (increasing timber volume) and associated carbon stocks. Avoids confusion of ownership with the funder because no carbon is directly associated with funding.
CAR (V2.1) / ACR (V2.0) Avoided Grassland Conversion Protocol	Easement required (similar land conservation agreements also allowed by ACR). Carbon credits issued based on avoided emissions by prohibiting conversion to cropland.	Protocol requires carbon ownership to be clearly identified through the easement or a separate agreement. Funders must be aware of this consideration and agree on ownership terms.

In addition to claiming a stake in carbon credit ownership, conservation funders may have additional requirements pertaining to carbon offset projects. For example, the U.S. Forest Service's Forest Legacy Program currently requires specific easement language related to the participation of lands (funded by this program) in ecosystem services markets, including carbon markets. Such language (provided in detail on page 36) allows the landowner to participate in a carbon market but requires advance notification of any proposed participation to the easement holder. The easement holder must then evaluate whether participation is compatible with the terms of the conservation easement and provide a letter of approval or refusal. Requirements such as these may have impacts on conservation easement drafting regardless of whether a carbon offset project is being developed in conjunction with the conservation easement. Preapproval language introduces a carbon offset project funding risk and uncertainty unless approval has already been received and clearly documented to the satisfaction of the specific certifying body, such as CARB.

Easement Timing and Drafting Considerations

Over both the short and long term, conservation easements and carbon offset projects can interact with and affect one another in a number of ways. It is critical for landowners and land trusts to understand and carefully consider not only their own conservation goals and objectives when drafting a conservation easement, but also the requirements of the protocol and the carbon-crediting program under which a carbon offset project may be registered. Drafting a conservation easement with these factors in mind will help to avoid future misunderstanding and conflict between the landowner, land trust and the carbon-crediting program, as well as help to avoid violations of both the conservation easement and the relevant carbon offset project protocol. Even when a carbon offset project is not being contemplated at the time a conservation easement is being negotiated, it is important to understand how a proposed conservation easement could impact a potential future carbon offset project.

Protocol Requirements

Landowners and land trusts should consider elements of carbon offset project protocols when developing conservation easements on land to be associated with a carbon offset project. In addition to the carbon ownership, the main considerations relating to project protocols have to do with the timing of easement recordation and specific required provisions that affect either project eligibility or the amount of credits issued. Land trusts should carefully compare the protocol requirements and conservation easement provisions (including boilerplate easement language) to ensure compatibility and to avoid unintended problems.

Timing

Generally speaking, in terms of carbon offset projects, conservation easements are viewed in two ways: first, as an option to designate the start a nature-based carbon offset project (and thus in support of project activities); and, second, as a potential set of legal requirements that must be taken into consideration when developing the baseline (or "business-as-usual") scenario for the quantification of carbon credits. This is because a conservation easement represents a change or long-term commitment to a restricted set of land use actions that increase carbon stocks and/or reduce GHG emissions. Under most protocols, the date a conservation easement is recorded can be the basis for determining the project start date.

In some cases, preexisting easements may render a project impractical or ineligible for participation under a specific protocol and carbon-crediting program because the easements represent a baseline management scenario that is essentially no different from the actions proposed by the project and fail to provide additional carbon benefits. For example, if a preexisting easement prevents grasslands from being converted to croplands, those lands would not be eligible as an avoided grassland conversion

project because a carbon offset project would not produce any additional carbon benefits. On forestry projects, if the preexisting easement prevents timber harvesting on the property, the property would not produce additional carbon benefits relative to that baseline scenario.

Some notable exceptions to the timing requirements do exist. Under ACR's avoided conversion of grassland protocol, conservation easements can be recorded up to three years prior to the project start date. Under CARB's and CAR's protocols for improved forest management projects, a conservation easement can be recorded up to one year before the project start date and not be considered part of the baseline scenario. This one-year grace period potentially provides some flexibility to landowners as they navigate the complicated processes related to conservation easements and carbon offset projects under these protocols. In addition, ACR's improved forest management protocol will consider evidence that the landowner seriously considered a carbon offset project in their decision to proceed with the easement where the start date is more than one year before the project's submission. As an example, referencing GHG mitigation as a purpose of the conservation easement might provide that evidence.

Phasing of easements is also allowed under certain circumstances. Avoided forest conversion projects registered under CAR's voluntary forest protocol are able to phase conservation easements under a single project, with the last conservation easement recording date serving as the project start date, although only conservation easements recorded within 12 months may be included in a single project. However, both CAR and ACR offer ways for multiple projects, using their forest and grassland protocols, to join together in aggregates (also known as *cooperatives*), with a single entity acting on behalf of the aggregate and offering efficiencies to individual projects around monitoring, reporting and verification. Both programs provide options for individual projects registering under the same protocol (for example, avoided grassland conversion) to enter as an aggregate at any time, including projects owned by the same entity. Thus, a landowner phasing in easements on multiple tracts can enter each easement area into the aggregate and benefit from the efficiencies offered by this scenario. For more details, see *Carbon Markets: Are They Right for Your Land Trust?.*

Required Provisions

Depending on the type of carbon offset project being developed, the relevant protocol may require or give the option for the project area to be encumbered by a qualifying conservation easement to increase the amount of carbon credits to be issued. The following sections highlight the project types and protocols that include conservation easements. In either case, the conservation easement drafting process should include consultation with the relevant protocol, and potentially the program administrator, to ensure that any necessary easement language is incorporated appropriately.

Improved Forest Management Projects

CARB, CAR and ACR each have protocols for improved forest management projects. Improved forest management projects increase or maintain carbon stocks relative to baseline levels through management actions, such as reducing harvest intensity, extending harvest rotation lengths, maintaining stocks at a high level, widening stream buffer widths and increasing productivity by removing diseased or suppressed trees. Because the overarching goals of conservation easements are often directly in line with those of improved forest management carbon offset projects, the protocols also recognize that conservation easements may reduce risks to project carbon stocks and, accordingly, reward those projects with increased credit yields. In such situations, the crediting entity reduces the amount of a project's overall credits that are required to be contributed to a risk buffer pool that is designed to serve as insurance against individual project failures due to involuntary or unintentional reversals (such as natural disasters), thus increasing the total number of credits that are initially awarded to the project owner. (See Table 1-3 for further details regarding easement requirements under each protocol). Remember: Coupling a qualified conservation easement with an improved forest management carbon offset project is optional; the landowner can always grant a conservation easement that does not meet the standards of the relevant protocol. In this case, the project will simply not have its issuance increased due to the reduced risk of reversals. However, if any preexisting conservation easement contains provisions that affect forest management, the project may have a higher baseline, which could significantly reduce the amount of carbon credits issued, potentially even preventing project viability. Forest management provisions can also cause development process complications because they may require complex modeling or be based on vague language regarding ongoing compliance and defining the appropriate baseline.

Conservation easements placed on the project site well in advance of the carbon offset project start date require specific restrictions to be considered part of the baseline, or business-as-usual scenario, because they may affect the management of the resources upon which the carbon credits are based. In such situations, the project owner or developer needs to include and model limits on management activities specified in the conservation easement to determine the trajectory of carbon stocks and/or GHG emissions if the project were not initiated. Depending on the conservation easement language, modeling the impacts of these restrictions can be simple or complex. Complex and/or vague language can result in lengthy delays in carbon offset project development and/or larger than expected reductions in credits because carbon-crediting programs often require conservative assessments of vague language.

For example, if a conservation easement limits the ability of a forest owner to harvest trees in a riparian area, the project owner or developer must model this restriction, and the project cannot receive credits for the carbon that is already protected in the riparian area. This can be a

straightforward process if the easement states, for example, that "the Grantor may not reduce tree basal area by more than 50 percent within 200 feet of the streambank." However, if the conservation easement states that the forest owner must "conserve and/or enhance riparian forest habitat for marbled murrelet," modeling can be more challenging. The difficulty in modeling is compounded by the fact that a third-party verifier, the carbon offset registry, and CARB (if a CARB project) will subsequently review the modeling approach and underlying assumptions. The potential for disagreements regarding how best to model vague language can result in lengthy review delays, an overly conservative modeling approach or both.

All carbon-crediting programs require clear ownership of the right to receive carbon credits. If ownership of the carbon credits is unclear, CAR requires that such ownership be explicitly identified in the conservation easement or through a separate contract. It is also possible to share rights to carbon revenues or other benefits, which can either be recorded in an easement or a separate agreement, with or without term limits.

Table 1-3. Characteristics of conservation easements on improved forest management projects.

	CARB 2015 Forest Project Protocol	CAR Forest Project Protocol V5.0	ACR Improved Forest Management Protocol V1.3
Conservation easement required/optional	Optional	Optional	Optional
Required provisions	Acknowledge CARB as a third-party beneficiary of the conservation easement with the right of enforcement and standing as an interested party in any proceeding affecting the easement. (Certain state-funded easements may not qualify if the funder will not permit this language in its easements.)	Incorporates project implementation agreement (PIA),[7] binding both the grantor and grantee, as well as their subsequent assignees. Makes CAR a third-party beneficiary of the conservation easement to ensure the PIA is followed and remedies enforced. Makes all future encumbrances and deeds subject to the PIA.	Provisions that provide for the protection of carbon stocks for the duration of the project term.
Timing	Qualifying easement can be placed on project area at any time, up to a year prior to the project start	Qualifying easement can be placed on project area at any time, up to a year prior to the project start	Qualifying easement can be placed on project area at any time, but only affects crediting going

[7] The PIA is an agreement between CAR and a project operator setting forth (i) the project operator's obligation (and the obligation of its successors and assignees) to comply with the CAR protocol and (ii) CAR's rights and remedies in the event of any failure of the project operator to comply with its obligations.

	date, but only affects crediting going forward from the latter of the recordation date or the project start date.	date, but only affects crediting going forward from the latter of the recordation date or the project start date.	forward from the latter of the recordation date or the project start date.
Required duration	Perpetual	Perpetual	Duration of project or longer
Impact on buffer pool contribution	Lowered 7.0–7.2% depending on other risk factors	Lowered 6.5–7.2% depending on other risk factors	Lowered 2–3%

Avoided Conversion of Forests

Land trusts work to prevent loss of forest cover, ensuring the storage of carbon. CARB and CAR both have protocols addressing the avoided conversion of forests to non-forestland uses, such as agricultural or residential uses. Lands remaining in private ownership must be subject to a conservation easement to be eligible for participation under both programs, although there are differences between the relevant protocol provisions (see Table 1-4). Furthermore, these projects can also qualify for increased credit yields if the conservation easement contains certain provisions. However, like the improved forest management projects, the presence of a preexisting easement preventing forest conversion will render the site ineligible for registration as an avoided forest conversion project.

Table 1-4: Characteristics of conservation easements on avoided forest conversion projects.

	CARB 2015 Forest Project Protocol	CAR Forest Project Protocol V5.0
Conservation easement required/optional	Qualifying conservation easement preventing conversion out of forest cover is required (unless land is concurrently transferred to non-federal public ownership).	Conservation easement preventing conversion out of forest cover is required (unless land is concurrently transferred public ownership). Optional to include terms qualifying project for reduced contribution to buffer pool.
Required provisions	Dedication of project area to forest cover. Include only if seeking reduction in risk buffer pool contribution: Acknowledge CARB as a third-party beneficiary of the conservation easement with the right of enforcement and standing as an interested party in any proceeding affecting the easement.	Dedication of project area to forest cover. Include only if seeking reduction in risk buffer pool contribution: • Incorporate PIA, binding both the grantor and grantee, as well as their subsequent assignees • Include CAR as a third-party beneficiary of the conservation easement • Subject all future encumbrances and deeds to the PIA

Timing	Qualifying conservation easement recordation signifies start date.	Conservation easement recordation signifies start date. Additionally, a project may comprise multiple tracts of land under the same ownership but on which conservation easements were recorded separately, as long as all such easements were recorded within a 12-month time span. Qualifying easement can be placed on the project area at any time, but only affects crediting going forward from the time of recordation.
Required duration	Perpetual	Perpetual
Impact on buffer pool contribution	Lowered 7.0–7.2%, depending on other risk factors.	Lowered 6.5–7.2%, depending on other risk factors.

Reforestation

Recognized widely as an effective long-term climate change mitigation tool with numerous conservation benefits and the potential for widespread implementation, reforestation projects aim to increase carbon stocks on land that was previously forested or is experiencing a decline in forest cover. Yet reforestation projects face a distinct challenge in that significant carbon stock increases do not occur until many years after the start of the project, creating a misalignment between when significant costs are incurred and when revenues from carbon credit sales can be generated. CARB and ACR each have offset protocols for reforestation projects, although few projects have registered under either program because of this financial challenge. However, CAR has a methodology under its Climate Forward program to address the financial challenge associated with reforestation projects (see Table 1-5).

Climate Forward provides a mechanism for reforestation projects to be issued credits at the start of the project (on an *ex ante* basis) as a way to recognize the future sequestration. The amount of credits issued to projects registering under CAR's reforestation forecast methodology is based on a conservative estimate of the expected increases in sequestered carbon, given that projects are not required to undergo any long-term monitoring and reporting to evaluate the actual carbon stocks sequestered over time. Conservation easements add particular value in these projects in relation to the uncertainty of future increases because the easement will further ensure the ongoing maintenance of such increases.

In addition to helping to ensure the restoration and long-term protection of forest cover on a project site, conservation easements can also substantially increase the amount of credits issued to a reforestation project under CAR's forecast methodology. As long as the conservation easement

contains terms specified by the forecast methodology (see Table 1-5), credits will be increased to reflect the length of a term conservation easement (up to 100 years). In the case of perpetual easements containing the requisite terms, the amount of credits issued increases even more. The overall effect of the forecast methodology is to incentivize the long-term conservation of forests, as secured by conservation easements. For further details regarding how crediting is determined under this methodology, see *Carbon Markets: Are They Right for Your Land Trust?* and the Additional Resources on page 37.

As with improved forest management and avoided forest conversion projects, a conservation easement is optional for reforestation projects. However, without a qualifying conservation easement, a project will not obtain increased crediting. Furthermore, if a conservation easement predates the carbon offset project and it contains provisions that require restoration of forest cover, the project will likely not be eligible for any of these programs.

Table 1-5: Characteristics of conservation easements on reforestation projects.

	CARB 2015 Forest Project Protocol	ACR Methodology for Afforestation and Reforestation of Degraded Land V1.1	CAR Reforestation Project Forecast Methodology V1.0
Conservation easement required/optional	Optional	Optional	Optional
Required provisions	Expressly acknowledge CARB as a third-party beneficiary of the easement, with the rights to enforcement and standing as an interested party in any proceeding affecting the easement.	Provisions that provide for the protection of carbon stocks for the duration of the project term. Optional: further lowering of the buffer contribution if the easement requires onsite monitoring of carbon-related activities.	Limit timber harvest activities to management for forest resiliency, human safety or salvage (after natural disturbance). Non-salvage harvests conducted prior to the end of the crediting period must adhere to specified retention standards. Areas where forestland cover is lost because of a natural disturbance must be reforested.
Timing	Qualifying easement can be placed on project area at any time, up to a year prior to the project start date, but only affects crediting going forward from the latter of the recordation	Qualifying easement can be placed on project area at any time, up to a year prior to the project start date, but only affects crediting going forward from the latter of the recordation	Qualifying easement may be placed on the project area at any time. If recorded at project start, credit amount increases. If recorded after project start, a second batch of credits are issued based upon the

	date or the project start date.	date or the project start date.	difference between the with and without easement credit amounts.
Required duration	Perpetual	Duration of project or longer	No required duration, but duration affects crediting.
Impact on buffer pool contribution	Lowered 7.0–7.2%, depending on other risk factors	Lowered 2–-3%	N/A

Mature Forest Management

The promotion of more mature forest conditions has both the potential to generate significant increases in carbon sequestration and has long been a focus of conservation efforts and conservation easements, including as a means to expand and enhance habitat for wildlife species reliant on such conditions. The mature forest management forecast methodology under CAR's Climate Forward program aligns with these goals and requires a conservation easement on the project site. Activities under the conservation easement and associated carbon offset project are intended to generate climate benefits resulting from managing forests for more mature stand characteristics (that is, bigger, older trees and increased biomass). A set of provisions, which must be included in the conservation easement for the project to be eligible, guides forest management on a project site (see Table 1-6). Because the Climate Forward program does not require long-term monitoring of projects, these easement provisions—and their enforcement by the easement holder—are intended to ensure that mature stand conditions are achieved over time.

Additionally, the conservation easement directly impacts credit issuance for projects registering under the forecast methodology because they define the management scenario that will be used to calculate the amount of carbon growth over time. Those changes are compared to the project's baseline to estimate the additional carbon that will be sequestered by the project under the conservation easement. Like improved forest management projects, any conservation easement that predates the carbon offset project (and contains provisions that affect forest management) may result in a higher baseline for the project, which may significantly reduce credit issuance. The more closely aligned a preexisting easement's language is to the terms required by the forecast methodology, the less likely a potential project will be viable.

Table 1-6: Characteristics of conservation easements on mature forest management projects.

	CAR Mature Forest Management Project Forecast Methodology V1.0
Conservation easement required/optional	Required
Required provisions	Dedicate project area to forest use permanently. Require submission of timber harvest plan for review and approval by easement holder prior to any harvesting. Limit harvest activities to the following: • Ensure average diameter of trees at the stand level increases relative to pre-harvest averages • Provide for increased timber volume while promoting mature stand conditions • Identify situations where exceptions to harvest limits are allowed (i.e., to improve safety or resilience) • Identify conditions when salvage harvesting may be conducted after a natural disturbance Require reforestation (via active or passive management) of the site if forest cover is lost on >10% of the project area. Prohibit major soil disturbances from site preparation activities. Include restoration as a remedial option in the event of an easement violation.
Timing	Conservation easement recordation signifies project start date.
Required duration	Perpetual
Holder qualification(s)	• Qualified according to conservation easement enabling statute of the relevant state • Accreditation by the Land Trust Accreditation Commission (methodology requires more complex easement monitoring, and CAR assumes accredited land trusts have the capacity to implement such monitoring)

Avoided Conversion of Grasslands

Preventing the loss of grasslands is another common land trust goal that aligns well with carbon market objectives. CAR and ACR each has a protocol for projects that avoid the conversion of grasslands to another land use type to prevent the loss of soil carbon stocks. While CAR requires either a perpetual conservation easement prohibiting the conversion of grasslands on the project area or the transfer of the project area to the federal government, ACR requires a *legal agreement*, a conservation easement being one option, which must be bound to the title of the property underlying the project area. There are several other differences in protocol components related to the use of conservation easements (see Table 1-7). Similar to avoided forest conversion projects, the presence of a preexisting easement preventing the conversion out of grassland will render the site ineligible for registration as an avoided grassland conversion project under either protocol. However, an amendment to a

conservation easement that subsequently add provisions to protect grasslands from being cultivated, thus meeting the definitions of both registries' qualifying easement, may make the project eligible.

Table 1-7: Characteristics of conservation easements on avoided conversion of grassland projects.

	CAR Avoided Conversion of Grasslands Project Protocol V2.1	ACR Methodology for Avoided Conversion of Grasslands and Shrublands to Crop Production Project Protocol V2.0
Conservation easement required/optional	Required (in the absence of a concurrent transfer of land to the federal government)	Conservation easement or other legal agreement that runs with the land (e.g., covenant, deed restriction) is required
Required provisions	Prohibit grassland conversion to another land use	Prohibit grassland conversion to another land use
Suggested provisions	Incorporate the PIA and the GHG reduction rights agreement, binding both the grantor and grantee, as well as their subsequent assignees. Make all future encumbrances and deeds subject to the PIA. Incorporate and require environmental best management practices for rangeland management.	None
Timing of recordation	Signifies project start date or must be recorded by the time the project undergoes verification	Signifies project start date
Project submission relative to recordation	Within 1 year	Within 3 years
Required duration	Perpetual	Project term (40 years) or longer
Impact on buffer pool contribution	None	Lowered by 2–3%

Management Flexibility for all Types of Projects

In addition to including provisions within a conservation easement to ensure any relevant carbon offset project requirements are satisfied, it is important to consider provisions that allow for future management flexibility in the face of a changing climate while still achieving the desired carbon sequestration goals. When developing provisions for such flexibility, it is important to ensure they are consistent with the requirements of the protocol under which the project is registering. For example, in response to climate change, a property with a significant elevation gradient may experience an uphill shifting of tree species distribution, including increased mortality of species unable to adapt to the altered climate. Including provisions in the conservation easement that allow for salvaging trees that

die off in such a manner at a given site, followed by the establishment of native species that are better suited to thrive in the new conditions, would help the forest adapt. However, before including such adaptation-related easement provisions, consult the relevant carbon offset project protocol to make sure the provisions do not conflict with any project requirements. It is also important to strike the right balance between maintaining management flexibility and providing clear restrictions to aid baseline forest stock modeling and future stewardship of the easement.

Conservation Easement Stewardship

Land trusts accept the critical responsibility of ensuring ongoing compliance with the terms of conservation easements they hold. While there may be differences in establishing conservation easements that also account for potential or actual carbon offset projects from a land trust's standard practice, the land trust's easement stewardship responsibilities are identical, with one exception: if the land trust has accepted any rights or responsibilities specific to these projects. For example, if a land trust is granted ownership of the carbon, it takes on the primary responsibilities and costs associated with the carbon offset project (monitoring, reporting and verification), unless the land trust assigns those responsibilities to another project manager through a separate agreement. However, in many cases, the conservation easement is simply designed to support the long-term durability of the climate benefits produced by the carbon offset project, and the land trust will not assume additional responsibilities.

Nevertheless, easement monitoring does have implications for carbon offset projects insofar as landowners are required to maintain compliance with relevant laws, regulations and legal requirements throughout the life of the project, as specified by the protocol under which the project is registered. Because a conservation easement is a legal constraint on the landowner's activities, noncompliance with the easement may affect the project's eligibility for new carbon credits. Project owners are obligated to disclose any noncompliance with relevant legal requirements. Thus, the project owner must report a violation of the terms of the easement to the carbon-crediting program. Verifiers auditing the reported results and documentation for a carbon offset project are similarly obligated to confirm the legal compliance of the project. As a result, they will likely contact the easement holder to confirm whether a project on land with a conservation easement has maintained compliance with the easement's restrictions or, in cases where a violation of the conservation easement has occurred, to get a better understanding of the nature of and circumstances surrounding the violation.

For example, the maintenance of soil carbon stocks in grasslands projects registering under an avoided grassland conversion protocol is supported by the conventional monitoring and enforcement of a conservation easement that prevents conversion out of grassland. In fact, the landowner or the land

trust, if it is the holder of the carbon rights, may even submit to the carbon-crediting program the land trust's conservation easement monitoring reports as evidence that the project site has not been converted out of grassland; no actions beyond standard monitoring efforts are required on the part of the easement holder. However, if a barn was built on the project site in violation of the conservation easement, the project owner would have to report the violation, and the verifier may request to interview the land trust personnel responsible for monitoring the easement.

If a land trust reports a violation to the carbon-crediting program, it may leave itself open to litigation by the landowner. One solution to this risk is for the landowner to fully indemnify the land trust for any claims arising from the carbon offset project. In addition, land trusts should increase their stewardship and defense reserves to cover the cost of potential litigation. It is important to note such situations would be a business dispute, which, again, Terrafirma coverage excludes.

KEY QUESTIONS TO ASK DURING CONSERVATION EASEMENT EVALUATION, DUE DILIGENCE AND DRAFTING

Developing a conservation easement always requires careful evaluation. Factoring in the complexity associated with a potential carbon offset project only heightens the need for thoughtful drafting. Whether a carbon offset project is currently being initiated or is merely a potential future undertaking on lands to be encumbered, land trusts should ask a number of key questions during the easement development process:

- Is a carbon offset project compatible with land trust goals and the landowner's goals?
- Who will own the carbon and/or benefit from revenues derived from the carbon offset project?
    - Does title review indicate ownership of carbon or rights to carbon credits by an entity other than the grantor?
    - Does a funder of the conservation easement require a stake in any carbon credits generated by the project?
    - Does the carbon project protocol or carbon-crediting program provide template language for clarifying or conveying ownership of carbon or carbon credit rights?
    - If the land trust will own the credits, have the easement provisions been carefully reviewed for compatibility and consistency with the requirements of the relevant carbon offset project protocol?

- Is the conservation easement being acquired with public funding, and are there requirements of the funding program that will affect the landowner or land trust's ability to generate carbon offsets?
- Does the carbon program consider all parties with an ownership interest in the property to be potentially liable in the event the project fails to perform as required? If so, how material is this risk and how can it be allocated?
- Does the development of a carbon offset project in conjunction with a conservation easement affect the easement appraisal and final easement valuation? (For example, the mature forest management forecast methodology requires that the compensation received by landowners for the easement exclude the value of foregone timber revenues.)
- Do the project protocol's and carbon-crediting program's timing requirements impact the easement development process?
    - Will timing requirements allow sufficient time for the land trust to properly conduct due diligence and easement drafting?
- Are there specific easement provisions that are required for the eligibility of the carbon offset project for a given program, and, if so, are those provisions compatible with the conservation goals of the land trust?
    - Is the land trust able to sufficiently monitor and enforce any specific easement terms required for a carbon offset project?
- Are there conservation easement provisions that could be included to allow a landowner to manage for climate change adaptation while otherwise conforming to the conservation purposes of the conservation easement and the requirements of the relevant carbon offset project protocol and carbon-crediting program?
- Does the conservation easement provide full indemnity to the land trust for costs arising from the carbon offset project?
- Does the land trust have adequate insurance to cover likely litigation and dispute expenses?

Be sure to consult with land trust legal counsel for additional questions and considerations.

CONCLUSION

Just as every conservation easement is unique, so is every carbon offset project. Combining the two can help conservation easements—an already highly effective conservation tool—be more effective in the fight against climate change. Indeed, conservation easements provide a time-tested and reliable way to ensure the permanence of the climate benefits generated by a carbon offset project. Although the overall conservation goals of each land trust remain paramount, it is important to consider the potential for future or current carbon offset projects while developing a conservation easement. This document provides some useful and important guidance about how conservation easements and carbon offset projects interact. However, carbon markets and project protocols continue to evolve as efforts to combat climate change mature, expand and accelerate. Easement drafters should review the latest carbon program documentation to help ensure that the land trust's and the landowner's conservation goals—including climate change mitigation—will be achieved. Before embarking on any carbon offset project, it is also critical for land trusts to consult with an attorney knowledgeable in carbon markets and conservation easements to address these sometimes competing and sometimes complementary tools for addressing a warming climate.

APPENDIX: SAMPLE CONSERVATION EASEMENT LANGUAGE

The samples provided below are for instructional purposes only. Land trusts should consult with their legal counsel before using any of the language provided. The Land Trust Alliance designed this material to provide accurate, authoritative information about the subject matter covered, with the understanding that the Alliance is not engaged in rendering legal, accounting, tax or other professional counsel. If a land trust or individual requires legal advice or other expert assistance, they should seek the services of competent professionals. The Alliance is solely responsible for the content of this document.

When drafting, please be advised that Terrafirma will not provide coverage in this area for any easement disputes.

Sample Language for Purposes Section

Project start date flexibility under ACR improved forest management protocol:

When there are no immediate plans for a carbon offset project but a landowner wants to increase their ability to enter into such a project at an undetermined date, one option is to briefly address the GHG mitigation concept in the purposes or recitals section of the easement. Here are a few examples:

[#] (Sample Title). The Property's Forestry values include its capacity to support long-term productive forest management, allowing for economically and ecologically sustainable harvest of high quality forest products in a manner compatible with conservation of natural habitat. The Property's forestry Conservation Values also include its capacity to sequester atmospheric carbon dioxide and store carbon as a means to mitigate climate change.

[#] Forestry. The Property's forestry values include its capacity to support long-term productive forest management, allowing for economically and ecologically sustainable harvest of high quality forest products in a manner compatible with conservation of natural habitat. The Property's forestry Conservation Values also include its capacity to sequester atmospheric carbon dioxide and store carbon as a means to mitigate climate change.

[#] Purpose and Term. It is the purpose of this Conservation Easement to ensure that the Protected Property will be retained predominantly in its natural, scenic, forested and open space condition, free of additional forest fragmentation or additional development; to protect any rare plants, animals or plant communities on the Protected Property; and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values or interests of the Protected Property described above . . . This Conservation Easement will ensure the protection of forest and other natural resources on the Protected Property and allow for the potential of economic return from the protection, management, maintenance and improvement of ecosystem services provided by the Protected Property. Ecosystem services include but are not limited to

carbon sequestration, the protection of water quality and quantity, the protection of wetlands, rare species and natural communities. . .

Landowner Reservation of Right to Undertake a Carbon Project on Conservation Easement Area

Natural Resource Protection, Preservation, Restoration and Enhancement. Grantor reserves the right to protect, preserve, restore and enhance the natural resources of the Property in accordance with sound, generally accepted conservation practices and the provisions of Section [#](Sample Title). Use of the Property for mitigation shall be limited to activities that restore and enhance the existing natural resources above and beyond the protections provided in this Easement, and that do not result in destruction of an existing habitat for the creation of a new habitat type. [If the carbon project and the conservation easement are part of the same project:] Notwithstanding the foregoing, nothing herein shall (i) limit or restrict Grantor's right to develop, verify, register and maintain a project pursuant to the Compliance Offset Protocol - US Forest Projects adopted by the California Air Resources Board on June 25, 2015 or any successor thereto (the "Protocol"), including, without limitation, any federal program that is consistent with or preempts the Protocol, or (ii) affect in any way the baseline calculation for such a project. No later than twenty (20) days following written request by Grantee (which request shall be made no more than once annually), Grantor shall provide Grantee with copies of all inventories, harvest records, audit materials and other related documentation compiled for the purpose of establishing or maintaining carbon credits in the previous twelve (12) months.

Grantor's Reserved Rights to Carbon Sequestration or Offset Credits. Grantor expressly reserves the right to enter into agreements governing the management of the Protected Property ("Carbon Agreements") and to manage the Protected Property as [an Improved Forest Management Project] in accordance with those agreements so as to (i) maintain and increase carbon stocks on the protected property, and (ii) remain in compliance with the 17 CCR § 91500 et seq. and the Compliance Offset Protocol for U.S. Forest Projects established by the California Air Resources Board, a department of the California Environmental Protection Agency ("ARB") or other appropriate carbon project protocols implemented by a reputable carbon-trading program. The terms and conditions of this Easement shall be taken into account when calculating the baseline/business as usual of the Protected Property for purposes of establishing a new Carbon Agreement or developing other carbon credits or other emissions offsets that Grantor proposes to authorize, create, sell, exchange or transfer. Grantor will notify Grantee at least thirty (30) days prior to [entering into a new Carbon Agreement][the listing of a new carbon project], and Grantee shall promptly furnish a copy of such notice to [Funding Agency]. **[If required by funder:]** Grantee shall include in its annual monitoring report a summary of any activity by Grantor to establish carbon credits or other emissions offsets aside from the existing Project with respect to the Property, and Grantor shall provide Grantee with such further information as Grantee may request regarding such activity. Upon executing any such Carbon Agreements, Grantor shall provide a copy of the Carbon Agreements to Holder.

[For a pre-existing carbon project:] The Property is currently subject to a pre-existing carbon project at the Property (a "Project") pursuant to the Compliance Offset Protocol – U.S. Forest Projects adopted by the California Air Resources Board on [_____] (the "Protocol"). The terms and conditions of this Easement shall be taken into account when calculating the baseline/business as usual of the Property for purposes of establishing a new carbon project (in addition to the Project) or other carbon credits or other emissions offsets that Grantor proposes to authorize, create, sell, exchange or transfer via a reputable carbon trading program. Grantor will notify Grantee at least thirty (30) days prior to the listing of a new carbon project, and Grantee shall promptly furnish a copy of such notice to [Funding Agency]. Grantee shall include in its annual monitoring report a summary of any activity by Grantor to establish carbon credits or other emissions offsets, aside from the existing Project with respect to the Property, and Grantor shall provide Grantee with such further information as Grantee may request regarding such activity.

Clarification or Conveyance of Carbon Rights

Conveyance of carbon rights ownership to land trust, with revenue-sharing from carbon credit sales:

1. Transfer of Carbon Rights.

1.1. Landowner hereby conveys to Holder, without reservation, any and all Carbon Rights (as defined below), and Holder hereby accepts all such Carbon Rights. For the purposes of this Conservation Easement, the term "Carbon Rights" means any and all credits, offsets, units, claims, allowances, acknowledgements, allocated pollution rights, benefits, value, credits, entitlement interests, or other real and/or personal property right and/or beneficial interest in or related, in whole or in part, to any reduction, removal, limitation, avoidance, sequestration, or mitigation of (i) GHG and/or pollutant emissions into the environment, and (ii) any changes to or impacts on the environment, in each case (items (i) and (ii) inclusive) **[For Grassland:]** [resulting from the effects on organic carbon stored in the soil and belowground biomass as of the date of the this Conservation Easement by grazing and ranching practices, avoided prairie and grassland impacts, and/or prairie and grassland management on or in the Property and/or the growth of trees and other plants, grasslands and biomass on or in the Property] **[For Forestland]** [associated with the absorption by plants of carbon dioxide from the atmosphere and its conversion to carbon stored in trees and plants on the Property or stored in products extracted pursuant to forest management activities permitted herein, and trees and other vegetation and associated roots, surface duff and organic elements in the soil on the Property] **[For general purposes:]** [resulting from enhanced restoration or management activities undertaken on the Property. (The term "GHG" means any one of the following, either alone or in combination: carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_20), hydrofluorocarbons (HFCs), perfluorocarbons (PFCs) and sulfur hexafluoride (SF_6) and any other substance or combination of substances with a global warming potential that may be or may become the subject of the United Nations Framework Convention on Climate Change and related protocols, or of any other treaties,

agreements and instruments, and any substance designated as such under any applicable law.) The conveyance of Carbon Rights herein is consistent with and does not restrict Landowner's reserved rights to use the Property as expressly permitted in Paragraph 4.

1.2. Without limiting the scope of the foregoing conveyance of Carbon Rights to Holder, Holder hereby agrees to share equally with Landowner the net income to Holder from the sale of credits from such Carbon Rights after deducting Holder's cost of marketing, developing or otherwise preparing for the sale of such credits. Provided that Holder, in its sole discretion, concludes that such actions are consistent with fulfilling its conservation mission and with its then-current policy approach regarding Carbon Rights, Holder further agrees to use reasonable efforts, to take, or cause to be taken, all actions, and to do or cause to be done, all things necessary, proper or advisable to initiate a project under the required requirements of the [Climate Action Reserve Grassland Project Protocol V2.0] or such other similar carbon-trading program, to proceed with development and verification of the project, with registration of the Climate Reserve Tonnes ("CRTs") or such other unit of measure, and with the sale of the CRTs to third-party buyers for the maximum crediting period.

NOTE: In these circumstances, securing an indemnity and liability release from the landowner is critical to protect the land trust's interests.

Partial conveyance of carbon rights to land trust, with reference to external agreement regarding carbon project development and credit sales:

1. Grantee's Rights. To accomplish the purpose of this Conservation Easement, the following rights are granted to the Grantee by this Conservation Easement:
    a. Carbon Sequestration and Ecosystem Services. The Protected Property may be used in connection with and in furtherance of programs related to carbon emissions and/or sequestration credits, nutrient and/or water quality credits, or habitat mitigation banks, or other similar offset, banking, mitigation or compensation programs. This Conservation Easement does not preclude Grantor and Grantee from entering into separate agreements to inventory, have verified, market and share in the revenue generated by carbon sequestration or other ecosystem services described above provided by the Protected Property. The Parties acknowledge that the Grantor has entered into an Agreement for the Development, Verification, Registration and Marketing of Greenhouse Gas Emission Reduction Benefits (the "Carbon Agreement") with Project Developer for XXX (X) years; the terms and provisions of the Carbon Agreement are incorporated herein by reference. The Grantee reserves Rights of First Negotiation and Refusal to benefit from and to provide services to monetize the programs described in section 4.7 above on and from the Protected Property with respect to any greenhouse gas emission reduction benefits not covered by the Carbon Agreement with Project Developer, including greenhouse gas emission reduction benefits after the Carbon Agreement expires and during the remainder of the

term of this Conservation Easement, and for any and all carbon emission credits or compensation arising from the protection and certified management of the Protected Property.

2. Default or Termination of Carbon Agreement by Project Developer. The Grantor and Grantee acknowledge and agree that Grantor has or is about to enter into the Carbon Agreement, which Carbon Agreement shall be read in *pari materia* with this Agreement. In the event of a default by Project Developer under the Carbon Agreement, which is not cured under any cure period provided therein, or in the event Project Developer terminates the Carbon Agreement, as provided therein, Grantor and Grantee agree that the Grantee may assume the obligations of Blue Source, LLC under the Carbon Agreement or find a third party to assume such obligations within 120 days after such Default by Project Developer.

CAR's forest and avoided grassland protocol easement language to clarify right to credit issuance:

TITLE TO CARBON OFFSET CREDITS. The [Grantor/Grantee] **[i.e., the project developer]** hereby retains, owns and holds legal title to and all beneficial ownership rights to the following (the "Project Reductions"): (i) any removal, limitation, reduction, avoidance, sequestration or mitigation of any greenhouse gas associated with the Property, including, without limitation, Climate Action Reserve Project No. [___], and (ii) any right, interest, credit, entitlement, benefit or allowance to emit (present or future) arising from or associated with any of the foregoing, including, without limitation, the exclusive right to be issued carbon offset credits or Climate Reserve Tonnes (CRTs) by a third-party entity, such as the Climate Action Reserve.

Required Easement Language from Existing Protocols/Methodologies

References to State Enabling Statute for Conservation Easements

Qualified Organization. Grantee is a "qualified organization," as defined in §170(h)(3) of the Internal Revenue Code (I.R.C.) and Treasury Regulation §1.170A-14(c) and is a charitable organization as required under §38-30.5-104 (2) of the Colorado Revised Statutes (C.R.S.).

Whereas this Easement is created pursuant to the Uniform Conservation Easement Act, as enacted by the State of Maine under Title 33, Maine Revised Statutes Annotated, Sections 476 through 479-B inclusive, as amended; and
Whereas the Grantee is authorized to acquire conservation easements pursuant to Title 12, Maine Revised Statutes Annotated Section 552, as amended, and is qualified to hold conservation easements pursuant to Title 33, Maine Revised Statues Annotated, Section 476(2)B, as amended, and Sections 501(c)(3) and 170(b) of the Internal Revenue Code of 1986, as amended, and the regulations thereunder (as amended, the "Code").

Authorizing Statute. The State of Oregon has authorized the creation of conservation easements pursuant to Oregon Revised Statute 271.715 – 271.795, and Landowner and Holder wish to avail themselves of the provisions of that law without intending that the existence of this Conservation Easement, signed as of the date first written above, be dependent on the continuing existence of such law.

Avoided Conversion of Grassland or Forest Cover

Agricultural and Ranch Use. The provisions of this Conservation Easement limit the types of agricultural operations that can occur on the Property to those that restore or conserve grassland, protect grazing uses and related Conservation Values, to those that are consistent with the Conservation Purposes of this Conservation Easement, so long as they are consistent with the terms, conditions and restrictions set forth elsewhere in this Conservation Easement. Holder acknowledges and agrees that Landowner, in the absence of the Landowner's violation of the terms of this Conservation Easement, which would be subject to the terms of paragraph 7, has no affirmative obligation to restore the Property through its agricultural operations. Holder further acknowledges and agrees that agricultural operations that are permitted and otherwise allowed in the ALE Plan for the Property, as it may be amended in accordance with paragraph 3, are deemed to be permissible.

Agriculture. All Agricultural uses shall be conducted using stewardship and management methods that preserve the natural resources upon which agriculture is based. Long-term stewardship and management goals include preserving soil productivity, maintaining natural stream channels, preventing soil erosion, minimizing invasive species, avoiding unsustainable livestock grazing practices and minimizing loss of vegetative cover. Cultivation is prohibited, except for the purposes of restoring native vegetation. If agricultural acts or uses are no longer practiced on the Property, either Party may request that the Parties develop a mutually acceptable plan to ensure appropriate land cover that is consistent with the Purpose. The expense of developing and implementing said plan shall be borne by Grantor.

Purpose. It is the purpose of this Easement to assure that the Protected Property will be retained in perpetuity predominantly in its natural, scenic, forested and undeveloped condition, as evidenced by the Baseline Report, for conservation purposes and to prevent any use of the Protected Property which will impair significantly or interfere with the conservation values of the Protected Property, its wildlife habitat, natural resources or associated ecosystem ("Purpose").

Reference to CARB as Third-Party Beneficiary

Qualified Conservation Easement. This Easement is intended to be a "Qualified Conservation Easement" as defined in the Section 3.5 of the Compliance Offset Protocol - US Forest Projects adopted by the California Air

Resources Board (CARB) on October 20, 2011. To that end, CARB shall be a third-party beneficiary of this Easement with the right to enforce all obligations hereunder and all other rights and remedies conveyed to Grantee, including, but not limited to, standing as an interested party in any proceeding affecting the Easement.

Grantor and Grantee acknowledge and agree that from and after the registration of the subject project under the California Environmental Protection Agency-Air Resources Board (ARB) Compliance Offset Protocol-US Forest Projects, adopted June 25, 2015, CARB shall be a third-party beneficiary (defined as said party being vested with the right to enforce against grant or all obligations under the Conservation Easement and this Conservation Easement Addendum and Clarification, including the right to assert against Grantor for the duration for the “Term”), the right to enforce obligations material to the California Environmental Protection Agency-Air Resources Board (ARB) Compliance Offset Protocol-US Forest Projects, adopted June 25, 2015, and regulations issued by CARB against Grantor under this Conservation Easement Addendum and Clarification, including the right to assert standing as an interested party in any proceeding affecting the validity, extinguishment, condemnation or endorsement of the Conservation Easement and/or this Conservation Easement Addendum and Clarification.

Reference to CAR PIA

1. Grantee acknowledges that Grantor intends to enter into and record in the Official Records of Dorchester County, South Carolina a Restrictive Covenant and PIA with the Climate Action Reserve, a California nonprofit public benefit corporation ("Reserve"), encumbering the Protected Property and pursuant to which the parties will agree, amongst other terms and conditions, that the Protected Property is a "Forest Project" (as defined in the PIA), and Grantor shall undertake certain activities in order to ensure that such Forest Project (i) generates a net reduction and sequestration of greenhouse gas emissions and (ii) remains in compliance with the PIA and the "Forest Project Protocols" (as defined in the PIA), in each case, for the entire "Term" of the PIA (as defined therein). The parties hereto acknowledge and agree that upon execution and recordation of the PIA, each of the PIA and the applicable Forest Project Protocols shall be automatically irrevocably incorporated herein by reference, and the Parties hereto acknowledge and agree that from and after such time, the Protected Property is and shall be subject to the terms and conditions of the PIA, the Forest Project Protocols and any "Access Easement'' as defined in the PIA, together with the terms and conditions of the Conservation Easement and this Conservation Easement Addendum and Clarification.

2. In furtherance of Grantor's exercise of the rights retained hereunder, Grantor covenants and agrees that the terms and conditions of the PIA entered into with the Reserve shall run with the land.

3. Grantee, although it will not be a party to the PIA, hereby covenants and agrees that, upon Grantor's execution and recordation of the PIA, Grantee will (i) ensure that Grantee's use and activity on the Protected Property materially complies with both the PIA and the Forest Project Protocols and (ii) not knowingly permit any other Person to use any portion of the Protected Property or engage in activities in violation of the PIA or the Forest Project Protocols.

4. From and after the execution and recordation of the PIA, as described above, for the duration of the "Term" of the PIA (as defined therein), Grantor covenants and agrees that all future deeds, mortgages, leases, subleases, and other instruments or encumbrances that may transfer a Property Interest to another party shall: (i) incorporate by reference this Conservation Easement Addendum and Clarification and the PIA, and (ii) specifically state that the property interest thereby transferred is subject to this Conservation Easement Addendum and Clarification and the PIA. Any successor in interest of Grantor, by acceptance of a deed, lease, easement or other document purporting to convey any right, title or interest in the Protected Property, shall be deemed to have consented to, reaffirmed and agreed to be bound by and benefit from all of the terms, covenants, restrictions and conditions of this Conservation Easement Addendum and Clarification and the PIA with respect to the interest obtained in the Protected Property.

5. The Grantee acknowledges and agrees that the Grantee has no vested or contingent rights, title, interest or benefit in, to or in connection with any carbon sequestration and/or offset development upon the Protected Property.

6. The Reserve has reviewed the Conservation Easement and is aware of the perpetual duration of said Conservation Easement and the conservation purposes and intent of the Grantor and Grantee. Grantor and Grantee acknowledge and agree that from and after the execution and recordation of the PIA, as described above, the Reserve or any other similar body or agency regulating the issuance of greenhouse sequestration or reduction credits shall be a third-party beneficiary (defined as said parties being vested with the right to enforce against Grantor all obligations under the Conservation Easement and this Conservation Easement Addendum and Clarification, including the right to assert against Grantor for the duration of the ''Term" (as defined in the PIA), the right to enforce obligations material to the PIA and/or the Forest Project against Grantor under the Conservation Easement and this Conservation Easement Addendum and Clarification, including the right to assert standing as an interested party in any proceeding-affecting the validity, extinguishment, condemnation or enforcement of the Conservation Easement and/or this Conservation Easement Addendum and Clarification. Said entity is vested with said rights because the Grantor and Grantee acknowledge and agree that the issuance of greenhouse gas sequestration or reduction credits, or related sales are made in reliance on the terms and conditions of the Conservation Easement and this Conservation Easement Addendum and Clarification, and ultimately will help enhance the conservation purposes of the Conservation Easement and help fund the perpetual stewardship of the protected property.

Forest Legacy Program Ecosystem Services Market Participation

[Landowners/grantor/owner] may engage in ecosystem services markets under other programs, but such action must not adversely affect the interest granted under the easement to the Grantee or the Grantee's right of enforcement or be inconsistent with or defeat the conservation purpose for which the easement was acquired. No agreements relating to ecosystem service markets shall be made regarding the Property that is or is likely to become inconsistent with the FLP purposes, terms of the easement or other documents incorporated by reference. If the owner wishes to enter into such an agreement, the owner of the fee title will notify the holder of the easement of any proposed participation in ecosystem services markets the owner deems compatible with the Purposes and Terms of the Easement and related documents and explain why they believe market participation is compatible. The easement holder (in consultation with the State Lead Agency if the holder is not the State Lead Agency) will determine the compatibility of the market participation. As needed and appropriate to make the determination, [Insert name State Lead Agency] will consult with the USDA Forest Service. If it is determined to be compatible, the easement holder will provide an approval and authorization letter to the landowner and include the letter and ESM participation documentation as an attachment to the current Multi-Resource Management Plan/Forest Stewardship Plan. The easement holder may review and monitor all ecosystem services market participation for compatibility with FLP purposes and requirements.

ADDITIONAL RESOURCES

Publications

- Land Trust Alliance, *Amending Conservation Easements: Evolving Practices and Legal Principles*, second edition (Washington, DC, 2017).
- -----, *Carbon Markets: Are They Right for Your Land Trust?* (Washington, DC, 2020).
- -----, *Land Trust Standards and Practices* (Washington, DC, 2017).

Carbon Registries

American Carbon Registry

- Afforestation and Reforestation of Degraded Lands, last accessed 6/8/20
- Avoided Conversion of Grasslands and Shrublands to Crop Production, last accessed 6/8/20
- Improved Forest Management (IMF) for Non-Federal U.S. Forestlands, last accessed 6/8/20
- Standards & Methodologies, last accessed 6/8/20

California Air Resources Board

- Compliance Offset Program, last accessed 6/8/20
- Compliance Offset Protocol U.S. Forest Offset Projects, last accessed 6/8/20

Climate Action Reserve

- Forest Protocol, last accessed 6/8/20
- Grassland Protocol, last accessed 6/8/20
- Protocols, last accessed 6/8/20

Climate Forward

- Mature Forest Management, last accessed 6/8/20
- Methodologies, last accessed 6/8/20
- Reforestation, last accessed 6/8/20

Verra

- Catalog of Approved Methodologies, Modules & Tools, last accessed 6/8/20