

FSA-2535
(proposal 4)

U.S. DEPARTMENT OF AGRICULTURE
Farm Service Agency

Position 5

CONSERVATION CONTRACT

(See Page 5 for Privacy Act and Public Burden Statements)

1. This contract is made (a) _____ by and between
(b) _____

(Grantor), and the United States of America, acting through the U.S. Department of Agriculture, Farm Service Agency (Grantee). The Grantor and Grantee are jointly referred to as the "Parties."

2. The Grantor warrants sole ownership with marketable title to the contract area and will honor the intentions of the Grantee stated herein and preserve and protect the conservation values of the contract area. The Grantor agrees to comply with the terms and conditions contained herein for the use of the contract area and adjacent lands for access, and to refrain from any activity not specifically allowed or that is inconsistent with the purposes of this contract.

Witnesseth: OGC, is this needed?

3. Authority: This contract is authorized by Section 349 of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 1997), which authorizes the Secretary of Agriculture to enter into contracts on real property for conservation, recreation, and wildlife purposes.

4. Consideration. Consideration for this contract shall be an amount determined by the Grantee which cancels the indebtedness described below:

A. Amount of Original Note	B. Date	C. Principal Amount Canceled	D. Interest Amount Canceled

5. Purpose. It is the purpose of this contract to restore, protect, manage, maintain, and enhance the functional values of wetlands, uplands, highly erodible lands, and other eligible lands for conservation, recreation, and wildlife purposes.

6. NOW THEREFORE, the Grantor hereby grants and conveys to the Grantee, for (a) _____ years, commencing on the date of this agreement, all rights and interests in the lands comprising the contract area, including rights of access to the contract area, but reserving to the Grantor only those rights, title and interests listed in Item 8. It is the intention of the Grantor to grant and convey for (b) _____ years any and all other rights not so reserved. This contract shall constitute an equitable interest upon the land so encumbered; shall run with the land for (c) _____ years; and shall bind the Grantor, heirs, successors, assigns, lessees and any other person claiming under them. This contract will terminate automatically without further action at 11:59 PM on (d) _____, subject however to all valid rights of records if any.

7. Contract area description. The land encumbered by this contract is described as follows:

8. Grantor's reservations. Subject to Grantee's rights granted by this contract, the Grantor reserves:

- A. Title. Record title, along with the Grantor's right to convey or transfer title to these reserved rights.
- B. Control of access. The right to prevent trespass and control access by the general public as long as such control does not interfere with the purpose of the contract.
- C. Recreational uses. The right to enjoyment and those undeveloped recreational uses of the contract area specified in the conservation plan, including hunting, fishing, and leasing of such rights for economic gain, pursuant to applicable State and Federal regulations that may be in effect at the time.
- D. Subsurface resources. The right to oil, gas, minerals, and geothermal resources underlying the contract area, provided that any drilling or mining activities are to be located outside the boundaries of the contract area and will not have an adverse impact on the contract area.

9. Grantor's obligations. The Grantor shall comply with all terms and conditions of this contract as follows:

- A. Prohibitions. Unless authorized as a compatible use, the rights to the following activities and uses have been conveyed to the Grantee and are prohibited on the contract area:
 - (1) Haying, mowing, or seed harvesting for any reason;
 - (2) Altering of grassland, woodland, wildlife habitat or other natural features by burning, digging, plowing, disking, cutting, or otherwise destroying the vegetative cover;
 - (3) Dumping refuse, waste (including hazardous waste), sewage, or other debris;
 - (4) Harvesting wood products;
 - (5) Draining, dredging, channeling, filling, leveling, pumping, diking, impounding, or related activities, as well as altering or tampering with water control structures or devices;
 - (6) Diverting or causing or permitting the diversion of surface or underground water into, within, or out of the contract area by any means;
 - (7) Building or placing buildings or structures on the contract area;
 - (8) Planting or harvesting any crop; and

- (9) Grazing or allowing livestock on the contract area.
- B. Conservation plan. The Grantor, and heirs, successors, and assigns, are responsible for complying with the requirements of the conservation plan and any amendments.
- C. Fences. Unless specifically accepted by the Grantee, all costs associated with the construction and maintenance of fences and similar facilities to exclude livestock shall be the responsibility of the Grantor. All fences must be constructed in accordance with the terms and conditions of the conservation plan.
- D. Liability. The Grantor shall be liable for action occurring within or on the contract area.
- E. Notice. The Grantor shall notify the Grantee 30 days prior to sale or foreclosure of the property which includes the contract area and provide the name and address of the purchaser or foreclosing party, if known.
- F. Noxious plants and pests. The Grantor is responsible for noxious weed control and emergency control of pests as required by all Federal, State, and local laws. A plan to control noxious weeds and pests must be approved in writing by the Grantee prior to implementation by the Grantor.
- G. Reporting. The Grantor shall report to the Grantee any conditions or events that may adversely affect the wetland, **upland, highly erodible land**, wildlife, and other natural values of the contract area.
- H. Taxes. The Grantor shall pay when due, any and all real property and any other taxes and assessments, which may be levied against the contract area.

10. Compatible uses by the Grantor. The Grantee, at its sole discretion, may authorize, in writing, and subject to such terms and conditions the Grantee may prescribe, compatible uses of the contract area related to conservation purposes by the Grantor, including, but not limited to, managed timber harvest, periodic haying, or grazing.

If access across the contract area will not adversely affect the resource protected by the contract, the Grantor may be allowed access across existing roads or paths in accordance with the term and conditions of the conservation plan.

- (a) The existing road network is more particularly described in (b) _____
- (c) There is no existing road network

A compatible use will only be allowed if such use is consistent with the long-term protection and enhancement of the wetland, **upland, highly erodible land**, wildlife, and other natural values of the contract area. The Grantee's written authorization shall prescribe the amount, method, timing, intensity, and duration of the compatible use.

11. Grantee's rights. The rights of the Grantee include:

- A. Management activities. The Grantee shall have the right to enter the contract area to undertake, at its own expense or on a cost-share basis with the Grantor or other entity, any activities to restore, protect, manage, maintain, enhance, and monitor the wetland, **upland, highly erodible land**, wildlife, and other natural values of the contract area. The Grantee, at its own cost, may apply or impound additional waters on the contract area to maintain or improve wetland, upland, wildlife habitat, and other natural values.
- B. Access. The Grantee has a right of reasonable ingress and egress to the contract area over the Grantor's property, whether or not the property is adjacent to the contract area, for the exercise of any of the rights of the Grantee under this contract. The authorized representatives of the Grantee may utilize vehicles and other reasonable modes of transportation for access purposes.

- C. Contract management. Grantee may delegate all or part of the management, monitoring, or enforcement responsibilities under this contract to any entity authorized by law that it determines to have the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities. State or Federal agencies may utilize their general statutory authorities in the administrations of any delegated management, monitoring or enforcement responsibilities for this contract. The authority to modify or terminate this contract is reserved to the Grantee.
- D. Violations and remedies. The Parties agree that this contract may be introduced in any enforcement proceedings at the stipulation of the Parties; however, notwithstanding any violation or breach of the terms of this contract, this contract shall remain in full force. If the Grantor fails to comply with any of the provisions of this contract, the Grantee shall have any legal or equitable remedy provided by law and the right to:
- (1) Liquidated damages. If the Grantor violates the terms of this contract, the Grantee may assess liquidated damages against each parcel upon which the violation occurred. Damages will be assessed by imposing a lien upon each acre of the parcel involved in the violation. This lien will have the same lien priority as enjoyed by this contract. Damages will be calculated as follows:
 - (a) multiply the number of acres in violation by the per-acre amount of debt written down at the time the contract was established
 - (b) add the restoration costs for the contract acres on which the violation occurred
 - (c) add the Grantee's administrative expenses; and
 - (2) Reinstate all or a portion of the debt. If the violation occurs while the Grantor is still indebted to the Grantee and no restoration costs have occurred, the Grantee may reinstate all or a portion of the debt canceled in lieu of assessing liquidated damages. The Grantor will cooperate in executing any documents necessary to reestablish the **secured (should this be "canceled"?)** debt. Such reinstated debt shall be deemed a mortgage on the real property encumbered by this contract and other lands which were under mortgage at the time this contract was entered into; and
 - (3) Enter upon the contract area. The Grantee retains the right to enter the contract area to perform necessary work for prevention of or remediation of damage to wetland, **upland, highly erodible land**, wildlife, and other natural values; and
 - (4) Assess all expenses incurred by the Grantee. All expenses incurred by the Grantee, including any legal fees or attorney fees, may be assessed against the Grantor, to be owed to the Grantee immediately upon assessment.

12. General provisions

- A. Contract modifications. The terms and conditions of this contract shall not be modified except by the Grantee as provided in Item 10. The Grantee may modify the conservation plan to add or substitute conservation practices
- B. Successors-in-interest. The rights granted to the Grantee shall accrue to any of its agents, successors, or assigns. The agents, successors, or assigns shall have all of the discretionary powers of the Grantee under this contract, except that the power to release or modify in any manner the terms of this contract may be exercised only by a designated employee of the U.S. Department of Agriculture. **All obligations of the Grantor under this contract shall also bind the Grantor's heirs, successors, agents, assigns, lessees, and any other person claiming under them. (Question for OGC: same provision is also under Item 5. Is it needed in both places?)** All the landowners who are parties to this contract shall be jointly and

severally liable for compliance with its terms. **(Question for OGC: last sentence is included in Item 5. Is it needed in both places?)**

- C. Rules of construction and special provisions. All rights in the contract area not reserved by the Grantor shall be deemed granted to the Grantee. Any ambiguities in his contract that affect the conservation, recreation, or wildlife purposes shall be construed in favor of the Grantee. The grants, covenants, and servitudes benefiting the Grantee under this contract shall be unaffected by any action related to any loan or mortgage between the Grantor and the Grantee, including satisfaction or foreclosure, or by any subsequent amendments or repeal of Section 349 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1997).
- D. In the event any provision of this contract is held to be invalid, it shall be stricken while leaving the remaining provisions in force.

13A. Borrower's Name	13B. Signature
14A. Borrower's Name	14B. Signature
15A. Borrower's Name	15B. Signature
16A. Borrower's Name	16B. Signature

17A. Authorized Agency Official Name	17B. Title	17C. Signature
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ACKNOWLEDGEMENT

NOTE: The following statements are made in accordance with the Privacy Act of 1974 (5 USC 552a): The Farm Service Agency (FSA) is authorized by the Consolidated Farm and Rural Development Act, as amended (7 USC 1921 et seq.), or other Acts, and the regulations promulgated thereunder, to solicit the information requested on its application forms. The information requested is necessary for FSA to determine eligibility for credit or other financial assistance, service your loan, and conduct statistical analyses. Supplied information may be furnished to other Department of Agriculture agencies, the Internal Revenue Service, the Department of Justice or other law enforcement agencies, the Department of Defense, the Department of Housing and Urban Development, the Department of Labor, the United States Postal Service, or other Federal, State, or local agencies as required or permitted by law. In addition, information may be referred to interested parties under the Freedom of Information Act (FOIA), to financial consultants, advisors, lending institutions, packagers, agents, and private or commercial credit sources, to collection or servicing contractors, to credit reporting agencies, to private attorneys under contract with FSA or the Department of Justice, to business firms in the trade area that buy chattel or crops or sell them for commission, to Members of Congress or Congressional staff members, or to courts or adjudicative bodies. Disclosure of the information requested is voluntary. However, failure to disclose certain items of information requested, including your Social Security Number or Federal Tax Identification Number, may result in a delay in the processing of an application or its rejection.

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