



The Landowners' Land Trust

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Every conservation easement (CE) must have certain elements to reach fruition. First, the land has to have **conservation values (CVs)**. There are basic CVs set forth in the IRS code section 170h (see box below). Conservation Values set forth in 170(h) include such things as habitat for native animals and plants, productive forest and agricultural lands, and protection of water quality. Unless a property provides at least one of these benefits, any charitable deductions claimed on the CE may be deemed invalid. All CEs must have a **baseline documentation report (BDR)**, a snapshot in time of the property at the time of donation, that not only documents the property's CVs, but also maps out areas on the property to be preserved inviolate, as well as areas where reserved activities and uses may be undertaken.

All CEs must have a **conservation purpose**. The conservation easement must demonstrate that it will allow no activities detrimental to the conservation values it sets out to protect. The rights reserved within the CE – such as agriculture, timber management, or construction of barns, sheds, houses, and ponds – must be compatible with and allow for the protection of the CVs. For example, if the purpose of the easement is to protect prime agricultural soils, the landowner would typically reserve the “farmstead area” (repair shop, equipment shed, etc.) on the area with the poorest quality soil, or near a road, so as to maximize the productivity of the soil. If the landowner sets out to protect a rare plant, the area with the rare plant will be afforded special protection (perhaps limited or no harvesting, and no agriculture or food plots). The landowners must provide that their activities will be conducted in accordance with plans and best management practices (BMPs) to ensure the property will remain productive, and indeed have its productivity enhanced by agriculture, silviculture, and other activities on the property.

There must be an **endowment** on the property, to ensure its perpetual monitoring and the defense of the CE's terms and conditions. There must be **clear title** – you cannot donate what you do not own outright. At the end of the process of negotiating and defining all of the above, there must be a **recorded deed of conservation easement** – the terms and conditions of the CE run with the land in perpetuity and the deed will provide evidence of this for future titles.

Landowners Intent on Protecting the Land: The Most Important Ingredient

However, for any of the above to matter at all, the land must have a property owner willing to take the extraordinary step of saying, “the value that the commonwealth and I place on the qualities and uses inherent in this land are so important, that I will ensure their perpetual protection.” Our land trust under-

stands this and works diligently to make sure that we are readily available to help the landowner protect the property's conservation values in an efficient and professional manner. We work with the landowner to create a conservation easement that reflects the conservation values the landowner desires to protect. The easement is also constructed to ensure that the landowners' commitment to protecting the land does not constrain them from traditional uses of the property that provide value to them. This is critical to the success of a conservation easement.

We have now helped put in place over 250 CEs protecting nearly 100,000 acres. We have a significant body of practice that we bring to bear to ensure that our CEs are as up-to-the-minute in not only meeting but exceeding the evolving standards involved in putting a CE in place. Our baseline documentation is always being refined to ensure that it clearly demonstrates the conservation values associated with the property and clearly shows how the property will be used in the future. We work with landowners to put in place an endowment program that is feasible and yet ensures that their wishes for the property will be observed in perpetuity.

Forever is a mighty long time. As the landowners' land trust, we think our experience, our sensitivity to what landowners are trying to accomplish, and our attention to ensuring the proper legal form of our easements will help the time pass meaningfully and productively for all concerned. *(Continued on page 26)*

IRS Code Section 170(h) stipulates Conservation Easements (CEs) must be donated:

1. **in perpetuity;**
2. **to a qualified charitable organization, that has the commitment and resources to enforce the CE;**
3. **exclusively for conservation purposes.**

170(h) generally defines “conservation purposes” as:

- 1) **The preservation of land areas for outdoor recreation by, or the education of, the general public;** (With CEs given for recreation or educational purposes, public access is required to claim an income tax deduction.)
- 2) **The protection of relatively natural habitat for fish, wildlife, plants, or similar ecosystems;**
- 3) **The preservation of open space where such preservation will yield a significant public benefit and is either:**
 - a) For the scenic enjoyment of the general public (For scenic easements, much of the property must be visible to the public; physical access is not required); or
 - b) Pursuant to a clearly delineated federal, state, or local governmental conservation policy.
- 4) **The preservation of a historically important land area or certified historic structure.**
 - a) Visual or physical access is required, depending on the nature of the property or building to be preserved.



ALABAMA LAND TRUST

PROTECTING LAND for PRESENT

ALL THE WAY TO 100K . . .

When we drafted our 2007 year-end fundraising letter, we thought “All the Way to 100k” was a good slogan. With 18,000+ acres protected in 2006, it seemed reasonable that we could make it “all the way to 100,000” acres protected by the end of 2008. We got ahead of ourselves. The Alabama Land Trust and Georgia Land Trust put a record 35,556 acres into over 80 conservation easements (CEs) in 2007, bringing the total to a shade under 100k (with just less than 50,000 acres each protected in both Alabama and Georgia). It now looks as if we could reach 125,000 acres in 2008 — the goal our 2006 strategic plan gave us to reach by 2011.

Forever Wild/Special Natural Areas: The Forever Wild conservation easement, as the name implies, means that land will remain essentially as it is at the time the CE is granted. Generally these are mature forested ecosystems like wetlands, cypress swamp, and various hardwood forests — bottomland, mesic cove or xeric. Sometimes instead of designating the entire property Forever Wild, landowners set aside “Special Natural Areas” to receive particular protection within the larger CE. These areas, when protected by Forever Wild CEs and Special Natural Area designation, continue to provide critically important habitat for numerous migratory bird species, many of which are declining across their range. (The high habitat values here are identified in the Alabama and Georgia State Wildlife Assessment Plans.) These forests often also contain rare or imperiled plant species. One 2007 CE donor designated a Special Natural Area of about 100 acres protecting one of the largest known stands of the rare relict trillium; another donor created a 350-acre Special Natural Area that holds the largest known native stands of the Alabama croton and Durand oak. These CEs allow the donors to ensure the land’s stewardship in perpetuity while continuing to enjoy the hunting, fishing, hiking, and other “peaceful enjoyment” of the land. This protection also allows regener-

ating areas time to develop into a mature forested ecosystem. Around 15% of our 2007 acres protected were designated Forever Wild/Special Natural Area areas.

Riparian Corridors: These CEs protect the land along rivers and streams critical to water quality and habitat protection. Almost all of the CEs feature a water course on or bounding the property and most donors give these areas special protection: “no cut” areas or timber harvest limitations; provisions to ensure that agricultural operations preserve buffers; and actions taken to keep livestock off streambeds and out of wetlands. The habitat protection value of these CEs is inestimable. They are used by animal life along the banks as highway systems between increasingly limited habitat areas. Some of the riparian CEs were in the Tennessee watershed which now has only 5% of the wetlands originally associated with the river system.

The waters associated with these CEs host an astonishing numbers of species. The Cahaba, the last free-flowing river in Alabama and site of several 2007 CEs, is home to more than 131 species of freshwater fishes (18 of which have been found in no other river system), 40 species of mussels, and 35 species of snails. Of these animal species, 69 are endangered.

Then there are the people living along these rivers. Sometimes, rivers rally communities, and the properties they protect become a string of pearls along regenerating streams. Along Choccolocco Creek, in the high growth area along I-20 near Oxford, nearly four miles of streambeds were protected in 2007. Highlights from other watersheds worked in Alabama include: a single conservation easement that protected nearly six miles of streambed along the Black Warrior River in Greene and Hale counties, as well as along the property’s major creeks and sloughs; a landowner that gave special protection to almost ten miles of the Tallapoosa River and its tributaries in Tallapoosa, Randolph and Chambers counties; over two miles along the Coosa;

GEORGIA LAND TRUST

• FUTURE GENERATIONS

MAKE THAT 125K

and more than five miles along the Cahaba. In Georgia, another mile added to an existing CE along the Conasauga in Murray and Whitfield counties; and a little more than a mile on both the Chattahoochee and the Little River. More detail on these CEs and watersheds is on our website at www.galandtrust.org.

Wildlife Habitat/Working Forest:

The above CE types provide a great deal of habitat protection. Working Forest CEs, which are at their core dedicated to preserving the sustainable timber resource and associated production of commercially important timber products, incorporate many elements specifically aimed at improving wildlife habitat. They typically have management plans indicating such things as: current best management practices (BMPs) used; the size and placement of wildlife food plots to ensure adequate forage; what steps will be taken to protect special areas; and long-term plans for stand types (when and how the stands will be harvested). Some landowners' goals include longer stand rotations, minimizing clearcuts and longleaf restoration. Others focus on more intensive management of timber with an emphasis on protecting the productivity of the soils and waters.

Agricultural: These conservation easements seek to keep productive lands producing and to protect important agricultural soils. Generally, these CEs feature a significant percentage of soils regarded as "Prime Farmlands" or "Soils of Statewide Significance" by the USDA Natural Resources Conservation Service (<http://websoilsurvey.nrcs.usda.gov/app/>). A 600-acre conservation easement in Alabama in 2007 had virtually 100% "prime farmlands" soils. Land that good simply should not wind up as a "house farm." Some of these properties have been in the same family for nearly two centuries. Others may have newer owners, but they are still people who know the great productive value of their land and want to protect it. Agricultural CEs also include management plans to ensure that agricultural practices on the proper-

ties will preserve and enhance the productivity of the soils that is the core value of the CE.

Historical/Cultural: Conservation easements can be specifically designed to protect historic or cultural resources. In general, our CEs don't specifically focus on historical/cultural resources but the protected lands provide a meaningful context for the historic resources found on the properties. Some of these may not be grand or imposing (such as those shown at right — a roughly made artesian fountain, a tiny schoolhouse, and a family plot) but they offer a glimpse of landowners' lives over the years and the harmony of these lives with the land.

Mosaics and the Future: Many of our donors blend all the above elements: their properties have one-part working forest, another agriculture, and a "Forever Wild/Special Natural Area," woven together with riparian corridor and historical/cultural components. We look forward to continuing protection efforts in 2008, including working with previous conservation easement donors to add acreage, as well as new donors recommended by previous donors or otherwise interested in protecting their land.

We hope that by this time next year, we will be celebrating reaching the 125k-acre mark. The more different lands we work to help protect and see protected, the more we understand how much more there is out there that really deserves special care. We appreciate your support in the past that helped get us this close to our current goals, and we hope we can count on you to help us reach future goals and push ahead even further. 🙏

The Alabama Land Trust and Georgia Land Trust are separate conservation organizations working under a common corporate umbrella, governed by the same board of directors with some staffing focused on Georgia and others on Alabama. Visit the two organizations' combined website at www.galandtrust.org.

