

**STANDARDS AND PROCEDURES
FOR
CONSERVATION EASEMENTS**

**APPROVED BY AFRC BOARD OF DIRECTORS
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**ALABAMA FOREST RESOURCES CENTER
STRATEGIC PLANNING**

**PROCEDURES AND STANDARDS
FOR CONSERVATION EASEMENTS**

INTRODUCTION

The forest and farmlands of Alabama are part of a diverse American landscape. Through environmentally sensitive land management practices that integrate wildlife and forestry values landowners have made a significant contribution to maintaining the natural diversity and ecological heritage of Alabama and the Southeast.

Today that heritage is increasingly threatened by fragmentation. A primary cause is suburban sprawl emanating from our major metropolitan areas. Growth-related infrastructure such as new roads, schools, subdivisions have taken their toll on Alabama's rural landscape. The major factor in the loss of forest and farm lands since World War II has been the sale of property for residential development. Prior to the War, it was common practice that available land was quickly purchased by other forest and farmland owners. This is no longer the case. The pressure to convert land into housing developments has engulfed many thousands of acres of rural land.

According to the National Resources Inventory, a project of the Department of Agriculture, Alabama ranked 13th among states in the amount of rural land that was converted to urban uses from 1992 to 1997. During that five-year span 445,300 acres were converted at an annual rate of 89,060 acres per year. This rate is double the rate of forest and farmland that was lost to urbanization during the previous ten-year period.

Concern over the loss of these forest and farmlands and their associated invaluable habitats, prompted the Alabama Forest Resources Center to form a land trust for working forests and farms at its annual meeting on September 12, 1999. The new mission of the AFRC is:

**TO ENHANCE, PROMOTE AND PRESERVE THE PRODUCTIVITY AND
SUSTAINABILITY OF ALABAMA'S FOREST RESOURCES TO ENSURE
THEIR ECONOMIC AND ENVIRONMENTAL BENEFITS FOR FUTURE
GENERATIONS.**

The Center focuses on providing services via conservation easements, the USDA Forest Legacy Program, educational outreach, and advocacy and planning.

One of the most important tasks of the AFRC is securing conservation easements.

Easements hold great promise as one of the most effective techniques for the preservation of privately owned forestland in Alabama. A conservation easement is a legal agreement between a property owner and a qualified organization. An easement restricts the type and amount of development that may take place on a property. Easements restrict certain land uses. Each easement's restrictions are tailored to the particular property and to the interests of the individual owner. Easements keep private lands in private ownership. They allow land use traditions such as hunting, forestry and agriculture to continue. Most importantly, easements are a positive incentive for the landowner to ensure that future use of the property will be consistent with the owners' desires to protect certain characteristics of the land. In addition, a landowner with no development plans may reap significant financial benefits by donating a conservation easement to a qualified organization. Those tax benefits may include:

- (1) Income tax deductions for the value of the easement;
- (2) A reduction in potential estate or gift taxes on the transfer of property protected by easement; and
- (3) A possible reduction in local property taxes on the remainder interest.

The community as a whole also benefits from conservation easements. Easements enable communities to preserve open space for wildlife habitats, watershed and aquifer protection, forest land, agricultural land, scenic views, historic resources and natural areas without requiring public expense or access to private land.

To qualify for federal tax benefits, an easement must be donated in perpetuity to a qualified organization. The easement must be given “**exclusively for conservation purposes**” and fit into one or more of the five following categories as required by section 170 (h) of the Internal Revenue Code:

Conservation Purposes means:

- (1) The preservation of land areas for outdoor recreation and/or education of the general public;
- (2) The protection of a relatively natural habitat of fish, wildlife, or plants, or similar ecosystems;
- (3) The preservation of open space (including farm and forest land) where such preservation is for the scenic enjoyment of the general public; or
- (4) Pursuant to a clearly delineated Federal, State or local governmental conservation policy and will yield a significant public benefit; or,
- (5) The preservation of a historically important land area or a certified historic structure.

These five categories of conservation purposes are disjunctive - *any one will do*.

A landowner seeking tax benefits must ensure that any reserved rights in the easement do not impair the conservation value of the easement property.

In Alabama, most easements are drafted to fit the protection of “relatively natural habitats of fish, wildlife, or plants, or similar ecosystem” category. Property in this category must be in a relatively natural state. The property must contain rare, endangered, or threatened species or the property must contribute to the ecological viability of a park or other conservation area or it must otherwise represent a high quality native terrestrial or aquatic ecosystem. To a lesser extent, AFRC will seek to hold scenic easements along significant rivers and roadways through farm and forestland.

When AFRC entered the easement and land trust business in 2000, it had no written criteria or standards for a conservation easement program. The purpose of this document is to fill that void in the following areas:

- (1) Establish goals and criteria for receiving easements;
- (2) Suggest a "rough cut" of project priorities based on strategic factors; and,
- (3) Outline easement standards and practices to help guide the program in accordance with the mission of the Alabama Forest Resources Center.

Vision, Goals and Easement Criteria Vision for the AFRC

As we enter the new millennium, our vision is for Alabama to continue to serve as a working and sustainable rural landscape of national and international importance, in which ecological, economic and recreational values are interrelated. In order to protect this large landbase and its ecological heritage, landowners, local governments and citizens must recognize that their prosperity and individual goals are more likely to be successfully achieved if the traditional land uses of the region are valued as a whole and the land is not fragmented.

AFRC Conservation Goals:

- * To work in partnership with landowners to foster a pro-active conservation easement program which recognizes the need for good land stewardship that is compatible with sustainable, conservation, economic and consumptive use values.
- * To identify and better understand the natural ecosystems and cultural resources of Alabama.

- * To monitor regional growth management issues and work with local and state Governments to ensure that Alabama's conservation values are an integral part of the planning process.

- * To establish public informational and educational programs that demonstrate and promote the importance of the natural and cultural legacy of Alabama.

These conservation goals are predicated on the following factors that make the forests of Alabama unique and establish the reasons why this strategic conservation easement plan must focus on the state as a whole:

1. The forests of Alabama contribute to the ecological health of a much larger area. These forests supply pure water for industrial, agricultural and municipal drinking water needs of millions of users in Alabama and surrounding states. Extensive undeveloped forests protect our aquifers from contaminants associated with urbanization. In addition, these forests serve as important buffers to lakes, rivers, bays and other waterbodies.
2. Carefully managed for the propagation of game animals and other wildlife, the forests of Alabama are an important bio-reserve containing, for example, a significant portion of the native longleaf pine forests remaining in the United States on private lands. These pine forests are refuges for many species of plants and animals considered rare, endangered or threatened in Alabama and the nation.
3. The forests of Alabama contribute to the quality of life in adjacent urbanized areas by providing a distinct rural character of crossroad communities and scenic views.
4. The forests of Alabama form an interdependent landscape in which the ecological, social and economic components are inherently linked. The hunting tradition contributes economic incentive for the conservation of Alabama's forests under private ownership. A healthy forest maintained through appropriate silvacultural practices such as prescribed burning enhances the hunting experience. Prescribed burning also perpetuates natural habitats of other species of plants and animals providing benefits to the public at large. The absence of prescribed burning can be directly linked to the loss or deterioration of habitat required by a number of threatened and endangered species, i.e. red cockaded woodpecker, gopher tortoise, etc.
5. To ensure economic sustainability of these lands, sound forest management activities generate income while contributing to the health of the forest by mimicking natural structures and producing an aesthetically pleasing environment. Increased suburban development disrupts this fragile balance by fragmenting the landscape, threatening the

use of fire as a management tool and disrupting the use of the land for hunting and other recreational pursuits.

AFRC'S Criteria for Accepting Easements

AFRC, which is a “qualified” organization under Section 170(h), will consider accepting conservation easements that are consistent with its mission and philosophy and that meet the following criteria:

Property located in Alabama or an adjacent state;

Are perpetual;

Qualify as a conservation easement under the terms of the IRS regulations - meaning the donation must be “made exclusively for conservation purposes”;

Are of sufficient size to protect the conservation values associated with it;

Accompanied by a donation to the AFRC Easement Stewardship Fund; and,

Consistent with one or more of the following criteria:

- * Contain rare, threatened or endangered species or habitats; or have some unique natural characteristics or resources that warrant protection;
- * Protect significant open space, including forest land and farm land with emphasis on working forests and working farms, for its scenic value or pursuant to Federal, State or local conservation plans and policies, and will yield a significant public benefit;
- * Listed or are eligible for listing in the National Register of Historic Places or are certified as an Alabama TREASURE Forest;
- * Protect significant land for its outdoor, recreational or educational benefits to the general public.

Preference shall be given to those easements that protect land:

With important forest, natural, historic and/or open space resources;

Are of sufficient size to warrant protection and justify the expense involved;

Facing a high risk of conversion for development or non-forest use;

Adjacent to existing easements, other protected open space areas or significant water bodies;

Represent a rural landscape with a low level of existing development; and,

With low potential for future problems in monitoring, management, liability and/or enforcement.

AFRC Procedures & Checklist For Creating A Working Forest Conservation Easement

1. AFRC staff meets with landowner to discuss a possible easement donation and tour the property with appropriate professionals to determine the property's conservation values, the purpose and public benefit served, and the best conservation method to utilize. This information will be presented to AFRC's board of directors for approval and to determine if the property meets IRS and AFRC criteria and for approval. - AFRC Easement Review Committee and AFRC staff.
2. If, after a thorough discussion of the significance of donating a conservation easement the landowner indicates a genuine interest in proceeding, discuss the feasibility of an easement for the specific property and each party's duties, responsibilities and a general time line to complete the process. Ensure that the landowner has retained independent counsel and other advisors such as accountants, foresters, appraisers, etc. to determine the potential benefits and implications of donating a conservation easement. Encourage the landowner to have his experts "Run the Numbers". Although AFRC will provide the landowner with a great deal of information, it cannot give legal, financial or tax planning advice – Landowner, AFRC staff plus representative of the Easement Review Committee.
3. Explain AFRC Stewardship Fund and secure the landowner's willingness to make a one-time, tax deductible donation to cover stewardship and defense appropriate to the size and complexity of the easement under consideration. - AFRC staff.
4. Provide landowner and his/her agents AFRC's model conservation easement which can be tailored to suit the specific property. Secure letter of intent to precede - AFRC staff.
5. Secure letters from governmental entities showing support of protection – AFRC staff.
6. Evaluate the property according to AFRC Easement Criteria - AFRC staff & Easement

Review Committee.

7. Present preliminary easement request to AFRC board of directors to review and approve and include copy of formal board action in permanent file - AFRC staff.
8. Order a Phase 1 Environmental Report to demonstrate due diligence - AFRC staff.
9. If the mineral rights have been severed from the surface estate, a mineral resource assessment is required to determine whether the likelihood of surface mining on the property is “so remote as to be negligible”. Landowner’s Consulting Geologist.
10. Schedule and conduct biological and/or cultural inventory and order new aerial photos and a survey (if necessary) for inclusion in the Baseline Documentation Report. – AFRC staff.
11. Assist landowner in obtaining the services of a qualified conservation easement appraiser who must “demonstrate verifiable education and experience in valuing the type of property subject to the appraisal” as specified in IRS rules - AFRC staff.
12. Obtain updated title information and Subordination Agreement from lender if there is a mortgage on the property – Landowner and AFRC staff.
13. Prepare Baseline Documentation Report on property, including significant features, condition and management needs – Landowner and AFRC staff and appropriate consultants.
14. Work with landowner's forestry consultant to draft Conservation and Forest Management Plan which will set out AFRC’s goals for the property and the basic principles on which the forest will be managed by the landowner in the future - AFRC staff consults with landowner’s forester to review the Forest Management Plan.
15. Review and negotiate Special Natural Areas within the property that merit special protection - AFRC staff, consulting biologists/forester and Landowner.
16. Work with landowner's attorney and AFRC legal counsel to develop appropriate easement language including reserved rights - AFRC staff/counsel and Easement Review Committee.
17. Submit total package to Easement Review Committee a minimum of two weeks prior to AFRC Board of Directors ‘meeting for final review and approval – AFRC staff.
18. Execute finalized package including Conservation Easement, Baseline Documentation Report and Conservation and Forest Management Plan - Landowner, AFRC Staff, AFRC

President, and Attorneys for both parties.

19. Assure that the easement is completely and correctly filed and recorded in the public records of the appropriate county(s) as the easement is not effective until it is recorded - Landowner's Attorney.
20. Meet and present a copy of the entire easement package to the landowner, acknowledge the importance of the donation and review the obligations of both the landowner and AFRC - AFRC staff.
21. Deposit the Stewardship donation in the Community Foundation in a segregated account and set up an annual monitoring program for the easement. Establish a permanent Monitoring file tracking expenditures related to monitoring - AFRC staff.
22. Inform landowner of IRS appraisal requirements pertaining to gifts of property valued at more than \$5,000.00 and remind the landowner that he/she is responsible for determining the value of the donation and that the appraisal must be attached to the tax return if the gift is in excess of \$500,000.
23. If the landowner intends to claim a tax deduction for the gift of an easement, he/she must present Form 8283 to the land trust for signature acknowledging the gift. Section B, Part1, "Information on Donated Property," and Part 3, "Declaration of Appraiser" must be complete before AFRC can sign Part 4 of the document – AFRC Executive Director.
24. Deposit one set of original documents in fire proof vault at Safe Archives storage facility. Retain other set of signed originals in fire proof safe in AFRC offices. Record who in the organization has access to these files. File "Field Copy" of documents in office for use during monitoring visits. Supply landowner with appropriate number of copies of easement package – AFRC staff.
25. Prepare and deliver a "Gift Acknowledgement Letter" stating the landowner received nothing of value in return for the gift. The deduction can be denied if this letter is not in the possession of the landowner prior to the time the tax return is filed - AFRC Executive Director.

AFRC will not knowingly participate in a project where it has significant concern about the tax deductibility of the transaction or its own tax exempt status.