

ALABAMA FOREST RESOURCES CENTER

CONSERVATION EASEMENT CRITERIA AND CHECKLIST

**APPROVED BY AFRC BOARD OF DIRECTORS
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**FOR ADDITIONAL INFORMATION GO TO www.alfrc.org OR CONTACT
DAN DUMONT AT 251-433-2372 or 251-680-0782
dan@alfrc.org**

STANDARDS AND PROCEDURES FOR CONSERVATION EASEMENTS

INTRODUCTION

The 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.

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. AFRC will also seek to hold scenic easements along significant rivers and roadways through farm and forestland.

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 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 engagement letter indicating landowner's 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 opinion 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 prior to AFRC Board of Director’s 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 and AFRC Staff.
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 the AFRC Stewardship 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.