

# Alabama Land Trusts: An Overview of Legal Issues



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September 15, 2009



# What is a land trust?

- A land trust is a private, nonprofit organization whose mission is the acquisition and protection of land through direct action.
- A land trust works to protect natural, scenic, recreational, agricultural, historic, or cultural property.
- Land trusts can operate in urban, rural, and suburban areas.

# Forming a Land Trust

- Commonly called 501(c)(3)s (federal tax section)
- Alabama Non-Profit Corporation Act
  - Ala. Code § 10-3A-1 et seq. (2009)
- Mission Statements
- Tax Issues

# Alabama Non-Profit Corp. Act

- Charitable Purposes
- Articles of Incorporation
  - Name
  - Purpose
  - Duration (perpetual)
  - Name of Incorporators
  - Name of Board of Directors
  - Registered Agent
- Hold organizational meetings

# Mission Statements

- Mission Statement:
  - Necessary
  - Legally Binding
  - Specify the public interest(s) served
- Issues for Organizations already 501(c)(3)
  - Review Mission: Is it consistent with operating a land trust?
  - May need amending

# Sample Mission Statements

- To conserve land for the future of Vermont – *Vermont Land Trust*.
- To conserve, promote, and protect the open spaces and green places of ecological, cultural, or scenic significance in the counties of the Mississippi Coastal Plain - *Land Trust for the Mississippi Coastal Plains*.
- To protect the natural diversity and beauty of northern Michigan by preserving significant land and scenic areas and by fostering appreciation and understanding of the environment – *Little Traverse Conservancy*.

# Federal Tax Issues

- Tax Returns

- \$25,000 or less (not required but recommended)
  - Form 990EZ
- \$25,000 to \$100,000
  - Form 990EZ
- More than \$100,000
  - Form 990 and Schedule A
- Unrelated Business Income (more than \$1,000)
  - Form 990-T

# Federal Tax Issues

- Disclosure Requirements
  - Copy of annual tax return
    - Form 990 or 990EZ but not 990T
    - May omit names and addresses of contributors
  - Copy of application for tax exemption
    - Form 1023
  - Copy of any supporting materials
  - Copy of IRS response to tax-exempt application

# 501(c)(3) Status

- Requirements of 501(c)(3) status:
  - No private inurement (benefit) to members
  - Organization and Bookkeeping Requirements
  - Limited political activities
  - Unrelated Business Income allowed – but must be reported
  - Fate of Assets if Group Fails

# Acquiring Conservation Lands

- Choosing Conservation Projects
- Federal Tax Criteria
- Lands in Fee Simple
- Conservation Easements

# Choosing Conservation Projects

- Consistency with missions and goals
  - Does this project fit our land trust?
- Resource and Public Benefit Values
  - Is the land worthy of protection?
- Feasibility
  - Can the resources be protected at a reasonable cost to the land trust?
- Significance, high priority
  - Is this where we should devote our time and money now?

# Federal Tax Criteria

- Qualified Conservation Contributions
- Public Benefit Requirements

# Qualified Conservation Contributions

- Internal Revenue Code § 170(h) requires:
  - A qualified real property interest
  - Granted to a qualified organization
  - Exclusively for conservation purposes
- Requires Written Qualified Appraisal
  - Cannot be dated earlier than 60 days before the gift
  - Fair Market Value

# Qualified Conservation Contributions

- **Exclusive Conservation Purposes (IRS)**
  - Provides outdoor recreation or educational use for the general public
  - Protects natural habitat of fish, wildlife, plants
  - Preserves open space, including
    - Providing for scenic enjoyment of the general public, and
    - Yields a significant public benefit
  - Preserves an historically important land area or certified historic structure.

# Public Benefit Requirement

- Must be “significant”
- Public benefit is broadly defined
- IRS has factors for evaluating public benefit of conservation easements
  - Can be applied to fee simple land as well
  - But only legally apply to tax deductible conservation easements

# Public Benefit Requirement

- IRS factors
  - Uniqueness of the property to the area;
  - Intensity of land development in the vicinity of the property;
  - Consistency of proposed open space with public programs for conservation in the region;
  - Consistency with existing private conservation programs in the area;
  - Likelihood that development of the property will lead to or contribute to degradation of the scenic , natural or historic character of the area;

# Public Benefit Requirement

- IRS Factors (cont'd)
  - Opportunity for the general public to use the property or appreciate the scenic values
  - Importance of the property in preserving a local or regional landscape resource that attracts tourism or commerce to the area
  - Likelihood that the donee will acquire equally desirable substitute property
  - Cost to the donee in enforcing the conservation restrictions
  - Population density in the property area
  - Consistency with any legislatively mandated program identifying conservation parcels of land

# Public Benefit Requirement

- Practical concerns:
  - Document the public benefit of the transaction and how the project is consistent with the land trust's mission.
  - Inspect the property before entering into a transaction. (Earlier the better – saves time and money.)
    - Does the property meet land trust criteria?
    - Are there any management-related problems?
    - Do potential problems need further investigation?

# Land Acquisition

- Purchasing Land
  - Ownership of land in fee simple
- Gift
  - Land donated – must comply with IRS criteria if landowner wants tax deduction
- Conservation Easements

# Land in Fee Simple

- Land the trust owns outright
- May be purchased or donated
- Transactional costs may include
  - Title search
  - Title insurance
  - Deed preparation
  - Survey
  - Environmental due diligence
  - Preparation of baseline document

# Land in Fee Simple

- Taxes
  - Investigate possible exemptions
- Liability Insurance
- Document public benefit
- Monitor the property (at least annually)
  - Mark boundaries
  - Post for trespass
  - Look for possible encroachment

# Title Investigations

- To be valid, agreement must include all parties with interest in the property
  - Spouse
  - Tenants in common
  - Encumbrances – liens, mortgages
- Applies to fee simple and conservation easements

# Conservation Easements

- A conservation easement is a voluntary, legal agreement between a landowner and a land trust that permanently limits uses of the land in order to protect its conservation values.
- It allows a landowner to continue to own and use the land and to sell it or pass it on to heirs.

# Conservation Easements

- Alabama law requires the purpose to include:
  - retaining or protecting natural, scenic, or open-space use
  - protecting natural resources
  - maintaining or enhancing air or water quality
  - or preserving the historical, architectural, archaeological, paleontological, or cultural aspects of real property.
  - Ala. Code 35-18-1.
- May be held by government or charitable organizations whose purposes include conservation of natural resources (mission statements).

# Drafting Conservation Easements

- To be enforceable, must contain:
  - “explicit reference to that effect”
- Drafters may include third party enforcement – must be in easement.
- Duration – usually perpetual but must specify
  - If not, lesser of 30 years or life of grantor
- Prepare Baseline Documentation
  - Status of property and its conservation values
- Hire a knowledgeable attorney

# Monitoring Requirements

- Conservation Easements require monitoring
- Purpose: to detect and document any violation since last visit.
- Frequency: at least once a year.
- Document visit – for baseline purposes, to review next year when visiting.
  - Digital pictures good idea.

# Violations

- Often unintentional behavior of landowner
- Examples of common violations:
  - Surface alterations (like ditches or new roads)
  - Clearing of vegetation
  - Construction of unauthorized structures
  - Prohibited timber harvest
- Trust has duty to enforce easement conditions
  - But do so in least confrontational manner possible
- Work to restore damage to conservation values

# Enforcement

- Land trust has duty to enforce
- If enforcement action becomes lawsuit:
  - Land trust must show regular monitoring and enforcement of easements
  - Lax enforcement or non-enforcement may be considered waiver by the land trust of rights to enforce.
- Avoiding vagueness in easement makes enforcement easier

# Comparison

## Fee Simple

- Higher Initial Cost
- Greater Control/Management
- Can open land to public purposes, like education

## Conservation Easement

- Lower upfront cost – often donated by landowner
- Greater potential for disputes, may result in termination of easement
- Easier to acquire on large tracts of land
- Favorable for farmland
- Can be used for buffers around property already owned

# Management Costs

- Transaction Costs
  - Title Search
  - Title Insurance
  - Deed Preparation
  - Surveys
- Initial Capital Expenses (Fee Simple Lands)
- Costs of Continuing Stewardship
- Easement Defense Costs (Conservation Easement)

# Conclusion

- Be diligent!
  - Visit the land first.
  - Research the title
    - Are there deed restrictions? Lien holders?
    - Are all parties to the title in agreement? (spouses, tenants in common)
  - Draft documents carefully – consult an attorney
  - Establish baseline documentation
  - Visit the property regularly and work with landowners to resolve violations.

# Other Land Trusts

- The Nature Conservancy, [www.nature.org](http://www.nature.org)
  - In Alabama,  
<http://www.nature.org/wherewework/northamerica/states/alabama/>
- Alabama Land Trust, <http://www.galandtrust.org/>
- Land Trust for the Mississippi Coastal Plain,  
<http://www.ltmcp.org/>
- Alabama “Forever Wild Land Trust” – created statutorily by the state of Alabama. Alabama Const. Art. XI, Sec. 219.07. (2009)

# Resources:

- Sally K. Fairfax et al., *Buying Nature: The Limits of Land Acquisition as a Conservation Strategy, 1780-2004* (Sheldon Kamieniecki & Michael E. Kraft eds., 2005).
- Richard Brewer, *Conservancy: The Land Trust Movement in America* (Dartmouth College ed., 2003).
- Land Trust Alliance, *The Land Trust Standards and Practices Guidebook: An Operating Manual for Land Trusts* (Sylvia K. Bates & Tammara Van Ryn eds., rev. ed. 2006).
- Land Trust for the Mississippi Coastal Plain, *A Landowner's Guide to Conservation Options in Mississippi*