

CONSERVATION EASEMENT LANDOWNER'S MANUAL



LTLT

Land Trust for the Little Tennessee

Mission Statement

The Land Trust for the Little Tennessee is dedicated to conserving the waters, forests, farms, and heritage of the Upper Little Tennessee and Hiwassee River Valleys.

The Land Trust for the Little Tennessee

P.O. Box 1148, Franklin NC 28744

Tel: (828) 524-2711 Fax: (828) 524-4741

Web: www.ltl.org



In August 2010, LTLT earned accreditation from the Land Trust Accreditation Commission, an independent program of the Land Trust Alliance. Accreditation indicates that LTLT meets national quality standards of excellence in its operations to uphold the public trust and to ensure our conservation efforts are permanent.



**WELCOME FROM
THE LAND TRUST FOR
THE LITTLE TENNESSEE**

On behalf of the Land Trust for the Little Tennessee, I thank you for making the decision to preserve your land, and thus welcome you as a lifetime member of our organization. We trust that you are as committed to the perpetual conservation of your property as we are. We look forward to working with you to ensure that the purposes of the conservation easement are honored and supported.

We've prepared this manual to inform you of your rights and responsibilities as a holder of a conserved property, and of the assistance available from LTLT and other agencies to help you meet those obligations. In an ongoing effort to keep you informed, you will periodically receive our annual report, The Land Steward, and our newsletter, LTLT Stewardship Notes.

We hope you will contact our Stewardship staff if you have any questions about your easement. We wish you the best in the care and management of your newly conserved property and many years of enjoyment and satisfaction from knowing you saved a place you love.

Sincerely,

*Paul J. Carlson
Executive Director*

December 2012 (3rd edition)

Mike Logan

Cell: 361-3728 / Office/Home: 837-0354.

Access road construction, repair, and maintenance; septic system installation & repair; livestock watering systems; erosion control.

Micah Reeves

Cell: 361-7630 / Office: 835-9446.

Fencing, grading, mowing, general property management work.

Non-Profit Assistance—Watershed Associations

Watershed Association of the Tuckasegee River (WATR)

828 488-8418

www.watrnc.org

Hiwassee River Watershed Coalition (HRWC)

(828) 837-5414

www.hwrc.net

Resources on Native Plants

North Carolina Native Plant Society

www.ncwildflower.org

Botanical Gardens at Asheville

<http://www.ashevillebotanicalgardens.org/NativePlants/Native%20Plants.htm>

Going Native: Urban Landscaping for Wildlife with Native Plants

http://www.ncsu.edu/goingnative/ag636_03.pdf

Recommended Sources for Native Plants

<http://ncbg.unc.edu/pages/48/>

Consulting Biologists

Mountains-to-Sea Ecological, Inc.

828-551-8225 MtsSea@yahoo.com

www.mtsecological.com

Ecological inventory & assessment, conservation planning and design, natural resource management

Dr. Dan Pittillo

(828) 293-9661 dpittillo@gmail.com

Botanical inventory. Native of western North Carolina . Retired professor from Western Carolina University.

Mike Ivey

Botanical inventory.

(828) 808-2966 mtnivey4@yahoo.com

Land Planning & Design

Equinox Environmental

828-253-6856

www.equinoxenvironmental.com

Luther Smith & Associates, PA

828-697-2307

Scott Melrose & Associates, PA

828-684-5155

Land Stewardship

Botanical Services of WNC (Sonja "Sunny" Himes)

828-507-1188 shimes@yahoo.com

Invasive exotic plant management, native plant propagation, landscaping with native plants, botanical inventory

Nick Palotta

828-506-5293

Property maintenance: tree planting, orchard work, chainsaw work, mowing, maintenance of roads, trails, and buildings, etc.

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GUIDING DOCUMENTS

Deed of Conservation Easement

The conservation easement that you conveyed on all or a portion of your property (the easement area) is a legal agreement that runs with the title to your land. Each conservation easement is tailored to the landowner's circumstances and to the conservation values being protected. It is very important that you be familiar with the terms of your conservation easement, as it is the guiding document that is the base of our relationship with you. We suggest that you review the document annually, or whenever you are planning a project or activity within your easement area. If you have an issue about which the terms of the conservation easement are vague or uncertain, please contact LTLT's Stewardship staff to discuss.

Baseline Documentation Report

You should have received prior to or at the closing of your conservation easement a signed copy of the Baseline Documentation Report ("Report"). For every easement that LTLT receives, a Report must be completed. The Report documents the important conservation values protected by the easement and the natural and man-made conditions of the easement area at the time the easement is conveyed. It includes a narrative description, photographs, a survey, and maps. The Report serves as the foundation for future monitoring and enforcement of the easement. As owners exercise reserved rights, or as other changes to the property occur, LTLT will add further descriptions, photos, and maps to the Report to provide a continual record of changes to the easement area.

The Report is also required to comply with IRS regulations when the landowner is taking advantage of the tax deduction for a conservation easement donation. IRS regulations specify that easement donors are responsible for providing baseline information. However, LTLT typically compiles the report since we have the resources and expertise for doing so. Both the landowner and the Executive Director of LTLT sign the document to verify the

Wildlife Management – NC Wildlife Resources Commission (www.ncwildlife.org)

Patrick Farrell, Technical Assistance Biologist for Private Lands
828-456-6341 x 5, patrick.farrell@nc.usda.gov
- wildlife cost-share programs (e.g., WHIP)

Mike Carraway, District Biologist
828-646-9913, carrawmb@brinet.com
- regulations, nuisance problems

Private Assistance

Land Management and Restoration

LTLT sometimes partners with private landowners on land management and restoration projects, offering technical assistance and funding (depending on availability), including streamside reforestation and invasive exotic plant control. Contact Dennis Desmond at 828-524-2711 x 205 or at ddesmond@lslt.org

Forest Management - Consulting Foresters

Forest Stewards Cullowhee, NC
828-227-3388 rlamb@foreststewards.net
<http://foreststewards.net>

Greenleaf Forest Management Asheville, NC
828-254-1114 info@forestguide.com
www.forestguide.com

Also visit www.ncforestservice.gov for a list of and advice on selecting a consulting forester.

RESOURCES FOR LAND MANAGEMENT

Public Assistance

The following government agencies are excellent resources for the many conservation and restoration programs available.

Topic	General Information	Farm Management	Soil and Water Conservation	Forest Management
Agency	NCSU Cooperative Extension	NRCS District Conservationist	Soil and Water Conservation District	County Ranger, NC Division of Forest Resources
Website	www.ces.ncsu.edu	www.nc.nrcs.usda.gov	www.ncaswcd.org	www.ncforestservice.gov
Cherokee County	828-837-2917	828-837-6417 x 3	828-837-6928	828-837-5426 cherokee.dfr@ncagr.gov
Clay County	828-389-6305	828-387-6417 x 3	828-389-9764	828-837-5426 clay.dfr@ncagr.gov
Graham County	828-479-7979	828-479-9268	828-479-8562	828-479-6341 graham.dfr@ncagr.gov
Jackson County	828-586-4009	828-586-6344	828-586-6344 swc.jacksonnc.org	828-586-4007 jackson.dfr@ncagr.gov
Macon County	828-349-2046	828-524-3311 x 3	828-524-3311 x 3 www.maconnc.org/ soil-water.html	828-369-8677 macon.dfr@ncagr.gov
Swain County	828-488-3848	828-488-3785x3	828-488-3785 www.swaincountync.gov/SWCD.html	828-488-3932 swain.dfr@ncagr.gov

accuracy of the information. We provide a signed copy of the baseline documentation report for your records, while retaining two copies, one for our archives, and one for daily use.

LTLT Policies & Procedures

LTLT has adopted numerous policies to guide our organization in a sound and consistent manner. Among these are policies related to our stewardship of conservation easements, including the following:

- *Policy for Conservation Monitoring*
- *Policy for Conservation Easement Stewardship and Legal Defense Funds*
- *Policy for the Amendment or Termination of Conservation Easements*
- *Policy and Procedures for Conservation Easement Violation Prevention and Response*

A copy of any of these policies is available upon request.

Special Note on Easement Grantees

For some landowners, the Deed of Conservation Easement is with or has been assigned to the State of North Carolina through the NC Clean Water Management Trust Fund. In other cases, the easement may be co-held by LTLT and the state or federal government. In such cases, LTLT still has responsibility for monitoring of the easement, while issues such as exercise of reserved rights, violations, and amendments would require the involvement of the respective state or federal agency.

Tax Benefits

In accepting your project, LTLT determined that your property has conservation value. We strive to ensure our conservation easement properties meet and exceed the conservation value requirements of the IRS. Following your conservation easement donation you will receive an official acknowledgement of your gift from LTLT.

To take advantage of the federal charitable gift deduction, you will need to complete IRS Form 8283 (available at www.irs.gov). You should complete and sign the IRS Form 8283, send it to your appraiser, and then return the form for us to countersign along with a copy of the appraisal report. Generally, LTLT requires 5 business days to review and sign the form. To apply for the North Carolina conservation tax credit, you will need to complete an application for certification (available at www.oneNCnaturally.com). LTLT will assist you in preparing the supplementary information (maps, etc.) if requested.

These forms should be shared with your tax or legal counsel. LTLT does not offer tax or legal advice.

Stewardship Funding

Accepting conservation easements is a long-term commitment by LTLT. It requires the professional and financial resources to guarantee the continued protection of the conservation values that easements are designed to protect. Creating baseline documentation reports, monitoring each easement annually, responding to notices or requests for approval of reserved rights, keeping good records, and responding to real or potential easement violations require LTLT staff time, office and field equipment, and the funding to enable such work. Your contribution to our Stewardship Fund helps to secure the conservation values of your property into perpetuity. An acknowledgement of your gift to the Fund shall be sent within two weeks of the donation.

OUR STEWARDSHIP STAFF

Dennis Desmond, Land & Easement Stewardship Coordinator

Tel: (828) 524-2711 x 310

Email: ddesmond@lslt.org

Dennis joined LTLT in 2002 and since 2004 has coordinated LTLT's land stewardship efforts, including management of LTLT-owned lands, baseline documentation and monitoring of conservation easements, grant management, and coordination of stewardship volunteers. Born and raised in Cleveland, Ohio, Dennis's background includes a B.S. in Natural Resources from Ohio State University, an M.S. in Forestry from North Carolina State University, 13 years of international experience in community forestry and soil conservation, and 2 years with Appalachian Sustainable Development in southwest Virginia. Dennis is a North Carolina Registered Forester (#1515), and licensed NC Ground Pesticide Applicator.

Sonja (Sunny) Himes, Stewardship Associate

Tel: (828) 507-1188 (cell)

Email: shimes@lslt.org

Sunny has been working part-time at LTLT since 2009, originally focusing on invasive exotic plant control and habitat restoration activities. Since 2012, Sunny has also been assisting Dennis with conservation easement monitoring. Her education includes a Bachelor of Arts in Biology from the University of North Carolina-Asheville and a Master of Science in Biology from Western Carolina University. Previous experience includes seasonal work with The Nature Conservancy in Nebraska and North Dakota, and the five years with Balsam Mountain Preserve in Jackson County as a vegetation specialist. Sunny is a licensed NC Ground Pesticide Applicator.

Easement Violations

The phrase “an ounce of prevention is worth a pound of cure” is especially relevant in protecting the conservation values of your easement area. Experience by land trusts nationwide indicates that an easement violation is, fortunately, a rare event. In most cases, easement violations are not caused by the original easement grantor, but by third parties, or by subsequent landowners who are not aware of or disagree with the terms of the easement. Nationwide, the most common minor violations include: dumping of waste or other debris; surface alteration; prohibited cutting of vegetation; unauthorized use of all-terrain vehicles; alteration of streams or wetlands; prohibited timber harvests. The most common major violations include: construction of prohibited structures; destruction of an asset protected under the easement.

As stated earlier, LTLT has an established *Policy and Procedures for Conservation Easement Violation Prevention and Response* (available upon request). To help prevent violations, we ask you to do your part by: staying familiar with the terms of your conservation easement, informing your neighbors about your conservation easement, maintaining the easement area boundary lines, and notifying LTLT about any change in ownership.

Amendments

LTLT may consider amendments to the conservation easements that it holds if the overall conservation values of the entire protected property are fully maintained or enhanced. Due diligence shall be observed that there is no actual or perceived insider benefit, private inurement, or impermissible private profit from any of the changes. Further information on amendments is contained in LTLT’s *Policy for the Amendment or Termination of Conservation Easements*, available upon request.

Reserved Rights

You may have reserved rights in your easement document that allow certain types of development or activities on your property. Some reserved rights may be permitted only once, while others are perpetual. Certain activities may be restricted to a portion of the easement area, while others may be unrestricted as to location. In most cases, prior notification to or consent by LTLT is required before the commencement of any construction or the execution of other reserved rights (please refer to your conservation easement). When prior notification or consent is required, it is very important that you notify LTLT and submit plans in advance. If a planned activity is in compliance with the conservation easement, LTLT will send written acknowledgement or approval. If it is not in compliance, you will be asked to submit additional information or alternate plans. A record of all exercised reserved rights is kept in our permanent files.

You are responsible for being aware of and complying with all laws on your property. If the law requires permits or notification of any government agencies before undertaking an activity, you must complete those steps before going forward. LTLT is responsible only for evaluating your plans with regard to the conservation easement. Likewise, when government officials evaluate your plans, they will not consider whether your plans meet the terms of the conservation easement.

We are committed to working with you in a timely manner to ensure any proposed activity is appropriate. We have included a list of management resources at the end of this manual, and LTLT staff are always available to answer any questions or recommend professionals we have worked with in the past.

Boundaries

Knowing the location of the boundaries of your easement area is an essential element in fulfilling our obligation to protect the conservation values. Clearly demarcating the boundaries helps ensure that adjacent landowners and others will respect the easement area. We have signs for this purpose and we will contact you to schedule a time to post them. Maintaining walkable boundary lines via pruning of vegetation, removal of downed trees, etc., is a responsibility of the landowner, and makes LTLT's monitoring responsibility easier.



Monitoring

Periodic monitoring is crucial to the continued security of the conservation values protected by easements and is necessary to fulfill IRS requirements. Monitoring establishes a record of responsible stewardship and detects issues early. It also ensures that LTLT and the landowner maintain a good working relationship. Easement monitoring involves an annual visit from LTLT staff to inspect the easement area and document any changes.

LTLT will notify you when staff would like to monitor your property. Approximately one to two weeks before the monitoring date, a staff person will call to confirm the site visit and ask a series of questions about your property, such as whether any changes have occurred on the site and if you plan to exercise your reserved rights in the near future. You are always welcome to accompany us during a monitoring visit.

After the monitoring visit, you will receive a copy of the monitoring report. Please review it and let us know if you have any questions, then add it to your conservation easement records.

Changes in Ownership

As with any property, land subject to a conservation easement changes hands over time. In order to ensure perpetual protection of our conservation easements, we ask that you notify all potential buyers and lessees about the easement on your property. We are available to speak to prospective buyers regarding the terms of the easement. We also ask that you notify LTLT if you sell or transfer ownership of your property to another party.

It is very important that prospective or new landowners of property protected by conservation easements understand the significance of the easement; what it means, its restrictions, as well as LTLT's monitoring protocol. It is imperative that we are notified of new landowners so we can contact them, introduce our organization, and ensure the conservation easement is understood. In addition, we will explain our stewardship program and answer any questions the new owners may have. Establishing contact with the new landowners immediately helps us minimize misunderstandings and prevent violations of easement terms.

To ensure that we are able to uphold our stewardship responsibilities in perpetuity, we include, at your option, a provision within the conservation easement for an ownership transfer fee on easements closed after January 1, 2008. This transfer fee is equal to a percentage of the sale price, and will be payable at the time of the sale by all subsequent purchasers of the property. Some transactions will be exempt from the transfer fee, such as the transfer of property to immediate family members and charitable organizations.