



UNIQUE PLACES
TO SAVE

LANDOWNER RESOURCE SERIES

Landowner Guide to Understanding Conservation Easements



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INTRODUCTION

As owner of land that currently includes a conservation easement or someone who has recently purchased land with a conservation easement, you may have many questions about what a conservation easement is and how it affects you. A conservation easement is an effective way to protect your land's valuable natural resources and important biological systems for generations to come. As a conservation landowner, you play an important role in ensuring the protection of the land and its natural resources. This guide is intended to answer general questions about the land conservation industry, what it means to own land that includes a conservation easement, and Unique Places to Save's role as steward and long term holder of the conservation easement.

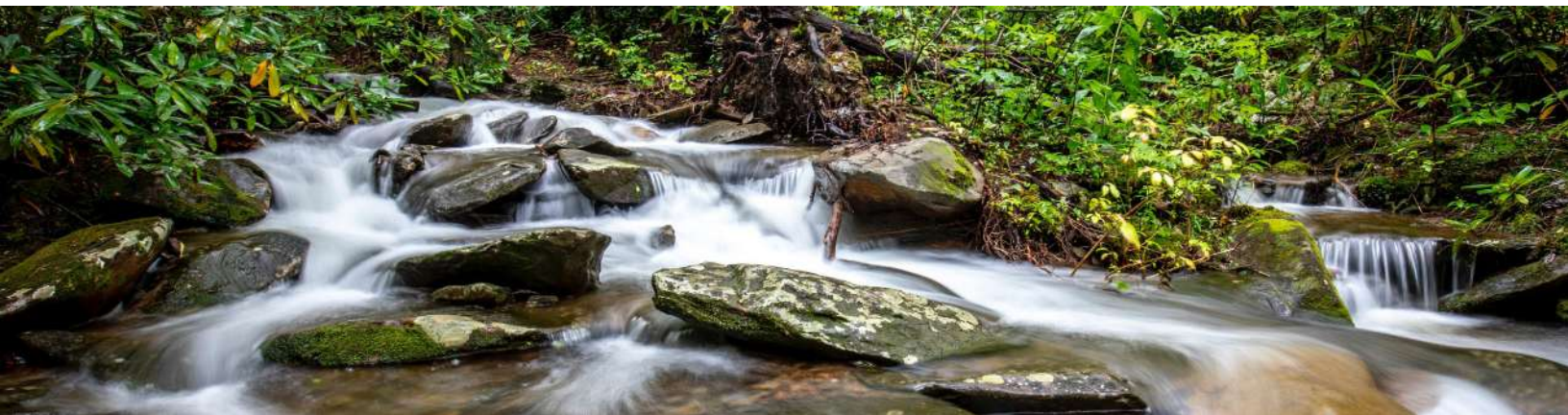


WHO IS UNIQUE PLACES TO SAVE?

Unique Places to Save is an entrepreneurial nonprofit that invests in, and enhances, the places that make our communities unique. Our base of operations is in the Triangle area of North Carolina, but we work in multiple states on many conservation projects (www.uniqueplacestosave.org). We have four programs within our nonprofit that have different focuses with similar goals of contributing towards the betterment of the environment, the economy, and communities. These programs are: Ecological Resilience, Unique Places Conservation, Technology and Nature, and Community Building. The Unique Places Conservation program (www.uniqueplacesconservation.org) essentially acts as a land trust (see definition below). We work with private mitigation companies, landowners, investors, and regulators to ensure valuable stream, wetland and species mitigation and restoration work is protected into perpetuity.

WHAT IS A CONSERVATION EASEMENT?

A conservation easement is a legal agreement between a landowner and a qualified entity in which the landowner voluntarily places their land under permanent restrictions to protect the land's conservation values (Land Trust Alliance 2021). The main purpose of a conservation easement is to prevent development and subdivision of the land. Some conservation easements are intended to protect wildlife and natural resources while others are intended to protect working farm, ranch, or forest lands. The landowner becomes the "grantor" who still owns the land but grants certain rights on the land, such as subdivision and development, to the entity or "grantee" who has legal authority to ensure the terms and restrictions over the land are upheld into perpetuity. The terms of the conservation easement can be negotiated between the grantor and the grantee to allow for certain rights still available to the grantor based on the conservation goals. Once the conservation easement is completed and signed by both parties, it is recorded in county real estate records. The term "conservation easement" often refers to the land that is being encumbered and also the legal document that records the agreement. For the purposes of this document, the land under a conservation easement agreement will be referred to as the "Easement Property."



WHAT IS A LAND TRUST?

A land trust is a private, non-profit organization that works to protect and preserve land by using conservation easements and other voluntary land conservation techniques and/or acting as the steward for the protected land. (Land Trust Alliance 2021). The land trust holds the conservation easement and has legal and stewardship responsibilities for the land that is encumbered by the conservation easement. The stewardship of an Easement Property involves understanding the terms of the agreement and ensuring that those terms are carried out, usually by regular monitoring visits to the Easement Property and communication with the landowner.

WHAT IS A MITIGATION BANK?

Mitigation banking is the preservation, enhancement, or restoration of a natural habitat to offset the ecological loss of an inevitable impact on the environment at another location within a defined service area. Mitigation banking uses a system of credits and debits to determine how much of the ecological loss is required to be compensated. Once a mitigation banker purchases the land (or works with an existing landowner) to be preserved, restored or enhanced, an Interagency Review Team, or other regulatory agency, works with the mitigation banker to approve the plans for the site and determine the amount of mitigation credits the bank can earn and sell. These credits can then be purchased by anyone who wants to execute a project that will negatively impact the environment within the service area.

There are many kinds of mitigation banks, but there are two types of mitigation banks that dominate the marketplace: Wetland/Stream Mitigation Banks and Conservation Banks.

- Wetland and stream mitigation banks are when mitigation activities are executed on a site with wetlands, streams, or both to provide compensation for unavoidable impacts to aquatic resources permitted under Section 404 of the Clean Water Act (EPA 2021). In North Carolina, stream buffer restoration projects are regulated by the North Carolina Division of Water Resources (“NCDWR”) and wetland or stream restoration projects are regulated by the US Army Corps of Engineers (“USACE”).
- Conservation banks are when mitigation activities are executed on a site with habitat for a particular threatened or endangered species to offset losses of that species. These activities are regulated by the US Fish and Wildlife Service and the National Marine Fisheries Service (Jhawar 2021).

There are many ways a mitigation bank site can generate mitigation credits. These include:

- **Restoration** - Restoration begins with a degraded ecological/hydrological system or habitat. This degraded system or habitat is then restored to its natural physical, chemical, and biological functions. For example, an agricultural field could be restored back to a wetland that was historically present before ditches were installed to drain the wetland for agricultural purposes. Another example could be when a small area of forest consisting of non-native plants is completely removed and replanted with native trees and other vegetation.
- **Enhancement** - Enhancement begins with a partially degraded system or habitat. This system or habitat likely has functioning natural elements, but is enhanced for the best possible function. For example, an existing stream may function and flow properly, but native vegetation may be planted on the stream banks to help prevent erosion and further protect the stream.
- **Preservation** - Preservation begins with a healthy, functioning ecosystem or habitat. This area is simply preserved by means of a permanent conservation easement to ensure the perpetual protection of the system. For example, an existing mature forest with a healthy stream may be completely preserved to protect the habitat from possible development, logging, or other incompatible uses.

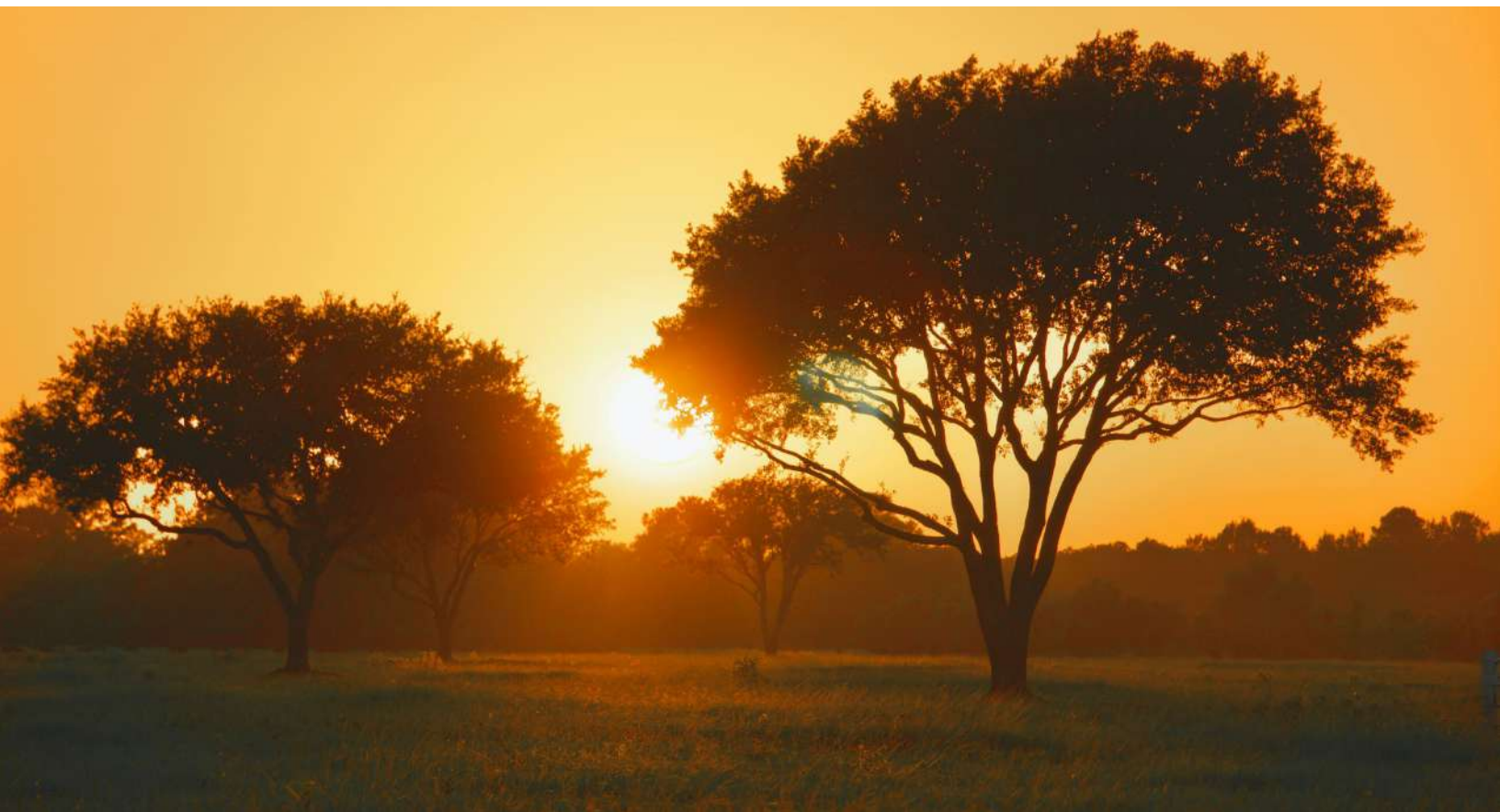
WHAT ARE THE RESPONSIBILITIES OF A CONSERVATION LANDOWNER?

- Conservation landowners are required to comply with the conservation easement deed's prohibited and restricted activities and ensure that any other parties accessing the Easement Property (with landowners' permission) are aware of the terms of the deed to prevent any potential violations. Please refer to your signed and recorded conservation easement document for prohibited/restricted activities and contact us if you have any questions or concerns.
- Landowners have reserved rights to access, hunt, fish, hike, sell, transfer, or gift the Easement Property while complying with federal and state or local laws. Please refer to your signed and recorded conservation easement document for further details on reserved rights and contact us if you have any questions or concerns.
- Landowners are required to provide written notice at least 60 days before any transfers of the Easement Property and incorporate the terms of the conservation easement document in any deed or other legal instrument that transfers any interest in all or a portion of the Easement Property.

- Landowners are responsible for obligations of ownership of the Easement Property such as, real estate taxes, fees, or charges levied upon the property. UP2S is not responsible for any costs or liability of any kind related to the ownership, operation, insurance, upkeep, or maintenance of the Easement Property, unless otherwise stated in the conservation easement document.
- Landowners are responsible for maintaining any fencing that is used to exclude livestock. As part of our annual monitoring, we inspect all fencing to ensure it is excluding livestock or other prohibited uses from the Easement Property.

WHAT ARE THE RESPONSIBILITIES OF UNIQUE PLACES TO SAVE?

- Unique Places to Save is responsible for the permanent protection of the Easement Property and therefore holds the rights to enforce the conservation easement by appropriate legal proceedings. To uphold this, a staff member will visit the Easement Property annually (or more frequently if issues are identified) to ensure no violations of the terms of the conservation easement. If violations occur, we are responsible for notifying the landowner of any such violation in writing. Landowners, after notification in writing from us, have 30 days to correct any breach of the conservation easement agreement. If the breach remains uncured after 30 days, we hold the right to enforce the conservation easement by appropriate mediation or legal proceedings.



- After the Mitigation Bank is closed out (see below for definition), we are responsible for composing a baseline document and providing a copy to the landowner that describes the existing condition of the Easement Property including all natural and built characteristics and infrastructure. The baseline document will be signed and acknowledged by the landowner and us as a complete and accurate description of the Easement Property at the time the Mitigation Bank is closed out/completed.
- We have the right to enter the Easement Property at all reasonable times for the purpose of inspecting the Easement Property for compliance with the terms of the conservation easement or for making any agreed upon scientific or educational observations.
- Unique Places to Save is responsible for the maintenance of signs indicating the Easement Property boundaries. This includes replacing broken or missing signs.

WHAT HAPPENS AFTER “CLOSE-OUT” OF THE MITIGATION BANK?

- Close-out occurs upon recordation of a conservation easement for preservation projects, or upon full approval by the appropriate regulatory agency for restoration and enhancement projects. Once the mitigation bank is closed out, UP2S will conduct a baseline visit to the Easement Property that will result in a Baseline Documentation report as described above. Prior to this visit, a Unique Places to Save staff member will contact you to let you know when they will visit and invite you to meet them during the visit. While it is not mandatory that you meet our staff member during the visit, it is greatly appreciated so that we can meet you, share updates, and ask any questions that may arise. Once the baseline visit is completed, we will begin annual monitoring of the Easement Property the following year.
- Before our annual monitoring visit to your Easement Property, one of our staff members will contact you to let you know when they will visit and invite you to meet them during the visit. While it is not mandatory that you meet our staff member during the visit, it is greatly appreciated so that we can meet you, share updates, and ask any questions that may arise.
- During the annual monitoring visit, our staff member will observe the entirety of the Easement Property to ensure the health of the biological resources and ensure that there are no potential violations of the conservation easement or other concerns.
- After the annual monitoring visit, our staff member will send you a monitoring report detailing the observations made during the visit and a letter of notice if any potential violations are found. If you were unable to meet during the visit, a staff member may call or email you to share updates or ask any questions.

WHEN SHOULD A LANDOWNER CONTACT UNIQUE PLACES TO SAVE?

- Please contact one of our staff members if you are concerned that there are potential violations of the conservation easement or threats to the conservation values occurring on your Easement Property.
- Please let one of our staff members know if you are planning to sell or have sold your Easement Property.
- If you have any further questions or concerns, a staff member will be happy to speak with you.

HOW DOES A LANDOWNER CONTACT UNIQUE PLACES TO SAVE?

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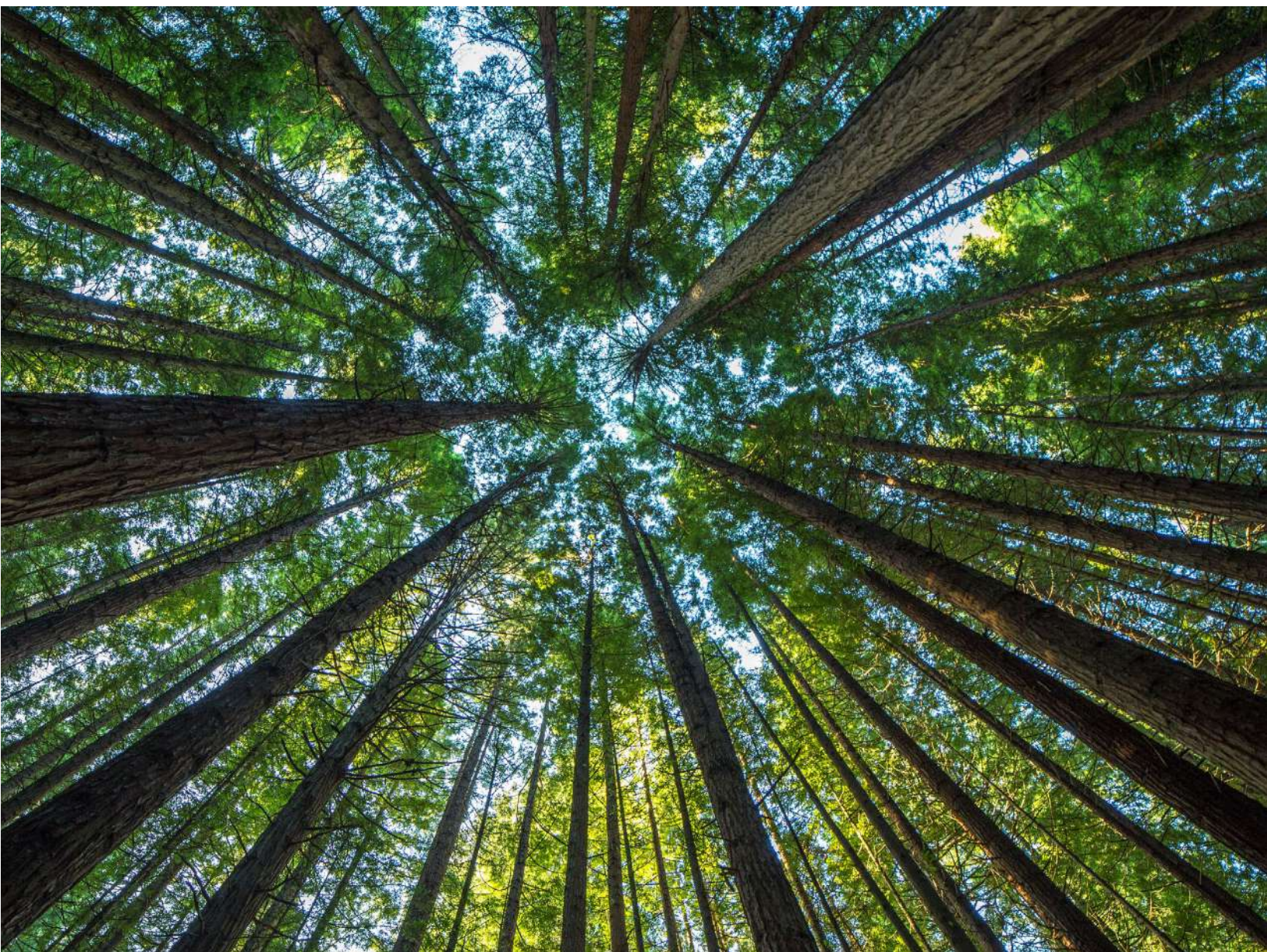


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