

The background of the entire page is a photograph of a forest. The top portion of the image is obscured by a solid green horizontal bar. The visible forest scene shows numerous trees with light-colored bark and green foliage. In the foreground, there are dense, bright green plants with fan-like leaves, possibly palmettos. The lighting is bright, suggesting a sunny day.

BEAUFORT COUNTY OPEN LAND TRUST

CONSERVATION EASEMENT LANDOWNER HANDBOOK





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INTRODUCTION

We welcome you as the owner of a property protected under a conservation easement (CE) held by the Beaufort County Open Land Trust (BCOLT). As cooperative partners, we trust that our landowners know what is best for their property, but we know that caring for a conserved property can be a complicated undertaking.

We have prepared this landowner handbook to:

- ◇ Help answer questions you might have about your CE
- ◇ Help you understand your rights and responsibilities as the owner of a conserved property
- ◇ Outline what BCOLT can do to help you steward your property's unique features in compliance with the terms of the CE.


This handbook, however, is not intended to replace or substitute any language, terms, or content in your CE document nor provide legal advice.

We hope you find this overview helpful in understanding your obligations as a CE landowner, and we always welcome your questions, concerns, and feedback. BCOLT has been protecting land in the Lowcountry since 1971 and we are excited to partner with you to protect the Lowcountry landscape!

CONTACT US

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BEAUFORT COUNTY OPEN LAND TRUST

The Beaufort County Open Land Trust is South Carolina's first and oldest land trust working to preserve open spaces, natural habitats and the rural character of communities throughout the Lowcountry.

This region is blessed with a rich mosaic of beautiful landscapes, healthy forests, historical treasures and unique small towns. Our work sustains the spirit of our community, understanding that our sense of place is tightly connected to these precious natural resources.

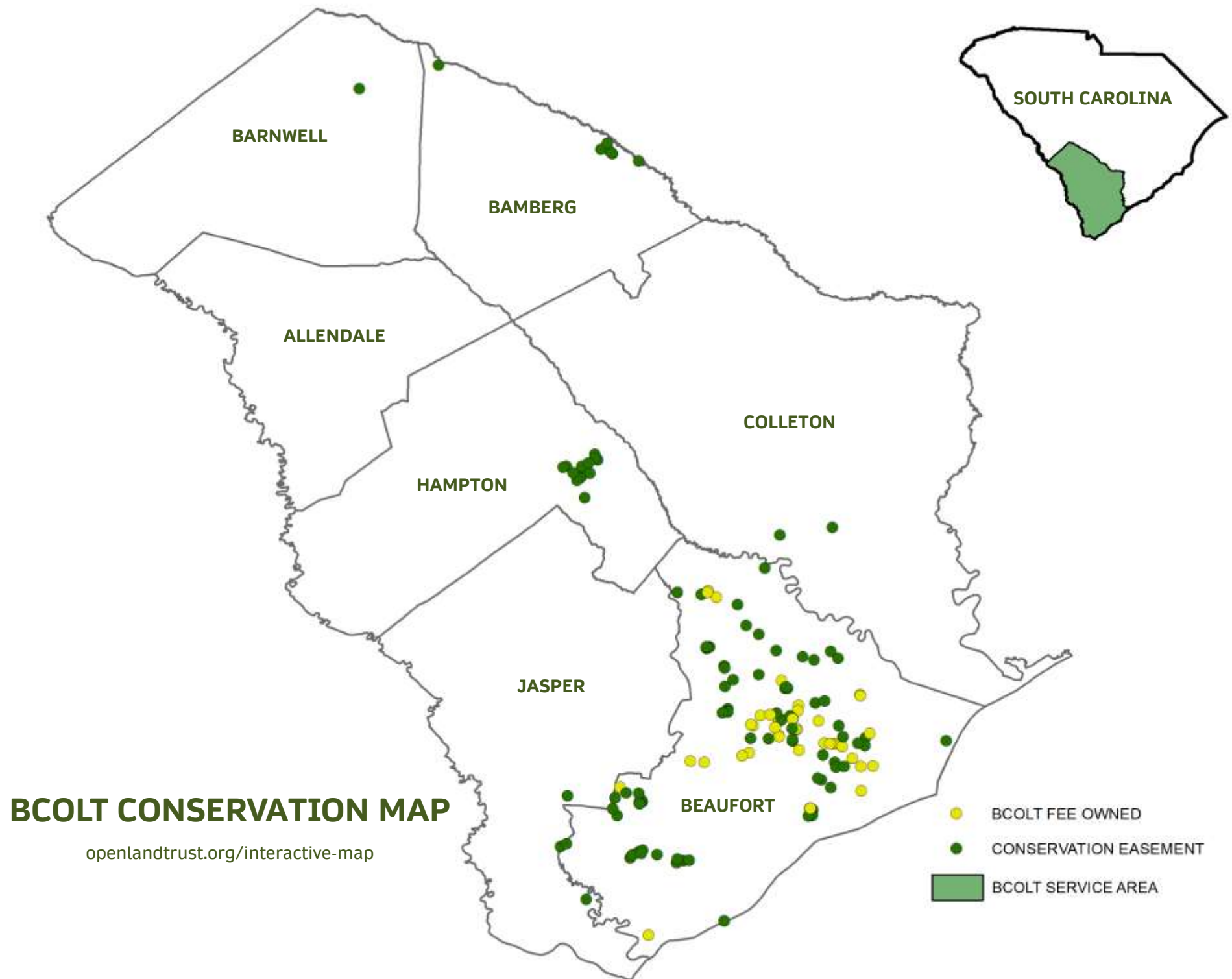
We preserve many types of land: iconic vistas providing windows to the rivers and marsh; parks and greenspace that form the foundation of community; working farms that define our rural and cultural heritage; and large properties that play host to exceptional hunting or timber harvesting operations. We recognize that land speaks to us in different ways, and we tailor our preservation efforts to honor the resources and the landowners vision.

We also recognize that preserving land is about water quality, wetlands, wildlife, and forests. And in protecting the resource, our job at the Beaufort County Open Land Trust goes one step further, to nurture the human need for sense of place, providing access to land, water and wilderness. Our universal charge is to make sure our environmental treasures remain available for future generations.

Through conservation easements, fee-simple land ownership, and land stewardship practices, the Beaufort County Open Land Trust secures properties in perpetuity that affect viewsapes, water quality, habitats, wildlife, farming, forests and other critical land uses threatened by overdevelopment or environmental degradation.

OPEN SPACE PRESERVED BY
BEAUFORT COUNTY
OPEN LAND TRUST

In Partnership with The Beaufort
County Rural & Critical Land Preservation
Program and The City of Beaufort





WHAT IS A CONSERVATION EASEMENT?

Conservation Easements are voluntary, permanent legal agreements between a landowner and a qualified holding organization, such as the Beaufort County Open Land Trust, that protect important natural resources on a property. The Property can be privately or publicly owned. In either case, the conservation easement limits development or use of the property to protect the natural resources — sometimes called conservation values — of the property.

The conservation easement allows the landowner to continue to own and use his or her land but limits what can be built or the types of activities, such as further subdivision, that can occur on the property to protect the conservation value of the land.

Protecting these resources (e.g. water quality, fish and wildlife habitat, scenic value, open space, and farmland) benefits not only the private landowner, but the public as well.

Conservation Easements are permanent interests in property recorded at the Register of Deeds Office in the county where your protected property is located and held by a qualified non-profit entity or governmental agency. A conservation easement is a legally binding agreement that remains on the property through any subsequent changes in property ownership. Each conservation easement is a unique agreement tailored to the special features of the property, the needs of the landowner granting the conservation easement and the policies of the easement holder.



Because individual landowners have different needs and goals for the conservation of their property, each recorded conservation easement contains unique terms which reflect a balance between protecting the land and its resources and the personal objectives of the landowner granting the conservation easement.

ADDITIONAL BENEFITS FOR A LANDOWNER GRANTING A CONSERVATION EASEMENT COULD INCLUDE:

- ◇ Peace of mind knowing the land will remain protected forever. Conservation Easements remain in force even after the land has changed ownership.
- ◇ *A possible* state and/or federal tax savings (in certain

circumstances, a conservation easement may be donated or granted at a reduced cost, providing the landowner an opportunity for an income tax deduction)

- ◇ *A possible* reduction in local property taxes (the property's assessed value may be reduced by the CE since it restricts the property's development value). Conservation easements can therefore offer landowners an alternative to selling or subdividing their properties.



WHAT IS A BASELINE DOCUMENTATION REPORT?

A baseline documentation report (BDR) must be prepared for every new CE to document the physical conditions of the property at the time the CE is placed on the property. The BDR describes the current conditions of the property's protected conservation values using narratives, maps and photographs.

The BDR details the conditions of all property features that are protected or affected by the terms of the CE. These include current land uses and improvements (e.g. existing roads, trails and structures) as well as CE purposes such as protecting ecological, scenic and/or historic resources. The specificity of each BDR depends on the details of the CE's purposes and reserved/permitted rights. BCOLT staff reference the BDR during annual monitoring visits to identify changes to the property (manmade or natural) in order to assure both BCOLT and the landowners that the terms of the CE are upheld in perpetuity. As landowners exercise reserved rights and changes occur on the land, BCOLT will record descriptions and photographs in our permanent records, providing a continual record of the protected property over time.

Before the CE can be recorded, the BDR must be reviewed and acknowledged by both the landowner granting the CE and the holder of the CE. The CE grantor and all successor landowners will receive a copy of the BDR for their permanent records. As a best management practice, BCOLT recommends keeping these materials where they can be easily referenced to ensure any future changes made on the property are consistent with the CE's terms.





ANNUAL MONITORING VISITS

After BCOLT enters into a CE, we are legally responsible for ensuring your property's conservation values are protected forever. To meet this obligation, we:

- ◇ Monitor your property at least once per calendar year.
- ◇ Produce an annual monitoring report (including a route map and photos, if necessary) to document any issues observed, changes to the property and/or boundary encroachments and to establish an ongoing record of the property's condition and use over time.

In addition to ensuring the terms of your CE are being followed, annual monitoring also helps us build and maintain positive working relationships with landowners by providing an opportunity for us to meet in person and answer any questions you might have about your reserved rights and/or proposed changes to your protected property. It is also a great opportunity for us to learn from you about what you may have observed on your property during the past year.

Prior to each year's visit, we will contact you to schedule a mutually convenient day and time to monitor your property. We understand that it might not always be possible for you to meet with us to monitor, but we welcome the opportunity whenever possible and especially when several years have gone by without a face to face meeting. If repeated attempts to connect with you are unsuccessful, we must still visit your property to fulfill our obligation as the CE holder.

To ensure timely communication, please notify us of any changes to your contact information as well as your preferred method for our staff to reach you (e.g. email, cell or home phone). Successful CE stewardship is an ongoing commitment that depends upon open communication between you and BCOLT staff.



CONSERVATION EASEMENT BOUNDARIES

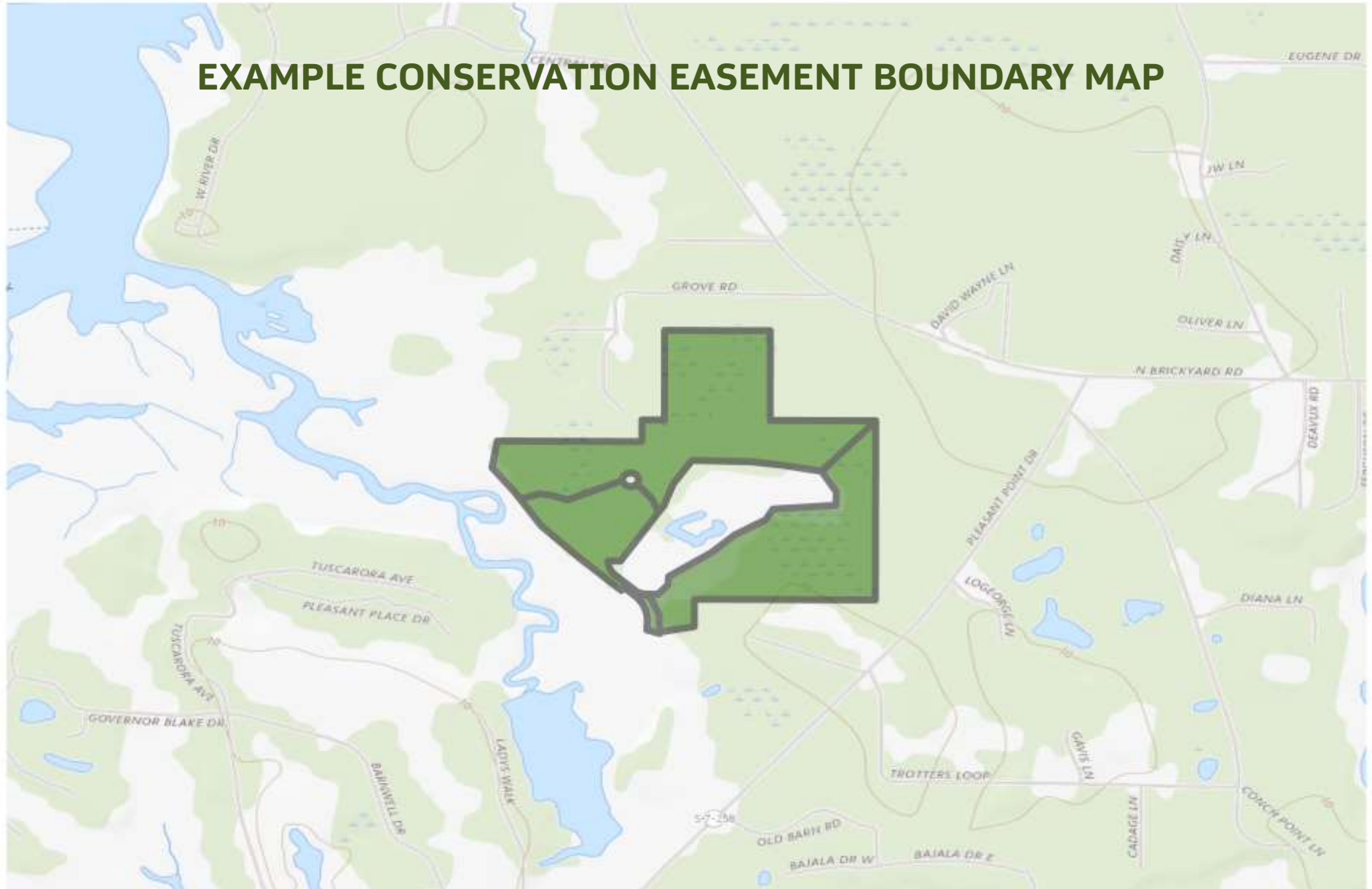
While some CEs cover an entire property, others conserve only a portion of a property. Each CE document includes a legal description of the protected area(s), and some have a boundary survey completed and recorded at the time the CE is established. Knowing the location of your boundaries is an essential element in fulfilling our obligation to protect your property's conservation values, conduct our annual monitoring visits, and help to inform your neighbors and others that your property is covered by a CE.


Often CE boundaries have been professionally surveyed and the corners marked with permanent survey monuments (e.g. iron pins, metal or plastic capped monuments). For those protected properties with no survey we rely on other information such as recorded surveys of abutting properties, regional parcel map data, and field equipment (e.g. compass, GPS) and evidence to help us identify CE boundaries for monitoring and enforcement purposes.

Regardless of the presence or absence of survey monuments or boundary signage it is still the responsibility of the CE landowner to know their boundaries, especially before commencing any reserved or permitted right. Where no survey exists, or where an existing survey is not adequate to define an easement boundary, hiring a professional land surveyor may be necessary to protect your property from external threats of trespass and third-party encroachments or to help you avoid an accidental violation of the terms of your CE.

As a complement to surveying your property, posting your boundaries helps to facilitate our annual monitoring and informs neighbors and others that your property is protected by a permanent CE. Posting your CE boundaries is entirely optional but is a good proactive measure. BCOLT has a variety of signs available for landowners that are good for marking the boundaries of your conserved property or larger signs that help identify your private property is forever protected by a CE.

EXAMPLE CONSERVATION EASEMENT BOUNDARY MAP



 Conservation Easement Boundary

0 0.25 0.5 1 Miles





ASSISTANCE AVAILABLE TO CONSERVATION EASEMENT LANDOWNERS

As the holder of the CE on your protected property, BCOLT's primary duty is documenting its conditions over time and ensuring compliance with the CE terms. In addition to our annual monitoring visits, we are always available to help you better understand your CE, how its terms may impact any future land use or management decisions, and whether or not certain activities are permitted.

Additionally, our staff is available to provide general advice on issues that might affect your property's conservation values, including managing invasive/non-native plant species or methods for controlling trespass. Assistance may also be available for on the ground management as well as mapping for your protected property as BCOLT seeks to maintain effective relationships with landowners and allow you to get the most out of your conserved property.







EXERCISING RESERVED OR PERMITTED RIGHTS

Every CE document outlines the basic rights the landowner of the conserved property retains. These rights were mutually agreed upon by BCOLT and the granting landowner to achieve the objectives for perpetual protection of the property and its important natural values. BCOLT is responsible for ensuring that the wishes of the granting landowner expressed in the CE document are carried out. Certain reserved or permitted rights require prior notification to and written approval from BCOLT. Although many simple reserved rights can be carried out at will, every CE is unique, so it is important for you to be familiar with its requirements.

The purpose of requiring the landowners to provide notice for certain activities is to afford BCOLT an opportunity to ensure the activity or use is designed and carried out in a way that is consistent with the terms of the conservation easement. Notification of your intent to exercise a reserved or permitted right is typically required in writing. If you are unsure whether notification is required, it is always better to err on the side of caution and check in with us before beginning your project.

When written approval is required, there is usually a set number of days of advance notice that the landowner must give BCOLT before undertaking certain activities; this number can be found in the CE. To aid us in issuing a timely approval, please be sure to provide sufficient detail of the nature, scope, design, location and timetable for your project. If we find the activity you are seeking to undertake is inconsistent with the terms of your CE, we cannot issue approval. However, we are fully committed to working with you to create an approvable plan that will ensure the protection of your property's conservation values.



CONSERVATION EASEMENT VIOLATIONS AND ENFORCEMENT

Working in partnership with our CE landowners, our goal is to work proactively to avoid violations of the terms of a CE. Despite best efforts, they sometimes occur. We realize most violations are not intentional and often result from landowners, neighbors, or other parties either being unaware of the CE or not understanding it. We take all violations, intentional or not, very seriously and encourage you to review the terms of your CE carefully and contact us if you need help interpreting the language. A phone call or email from you to ask questions and/or schedule a site visit with a BCOLT staff member can help prevent costly violations and/or irreparable damage to your property's conservation values before they happen.

BCOLT's careful and consistent monitoring and enforcement of the provisions of every CE we hold are critical aspects of ensuring the conservation values entrusted to us are protected forever. A key component of BCOLT's conservation easement violation policy is to maintain open communication and healthy working relationships with our CE landowners. We are fully committed to working with you to resolve violations amicably and always seek to negotiate a voluntary resolution.

If a violation does occur, BCOLT is obligated to work towards resolving it to meet our responsibilities as the CE holder. We will schedule a site visit to look at the issue and determine the nature, extent, and significance of the violation. Each violation is reviewed on a case-by-case basis. While many violations are minor, others are more serious and directly impact the CE purposes and values.

CHANGES IN OWNERSHIP

As with any property, land under a CE will change hands over time. To help ensure perpetual protection of your land, we ask that you notify your realtor and all potential buyers and lessees about the CE on your property. It is very important that your realtor and the prospective new owner of your CE property understand the significance of the easement: why it exists, how it works, the specific restrictions and allowances, and BCOLT's monitoring process. Occasionally, we learn of a change in ownership after the sale, making our relationship-building efforts with the new landowner less smooth and raising the risk of unintentional CE violations.

If you do sell your property or transfer ownership, most CEs contain the requirement that BCOLT be notified prior to conveyance. Even if this term is not required in your CE, we urge you to notify us as it helps ensure that we will be able to:

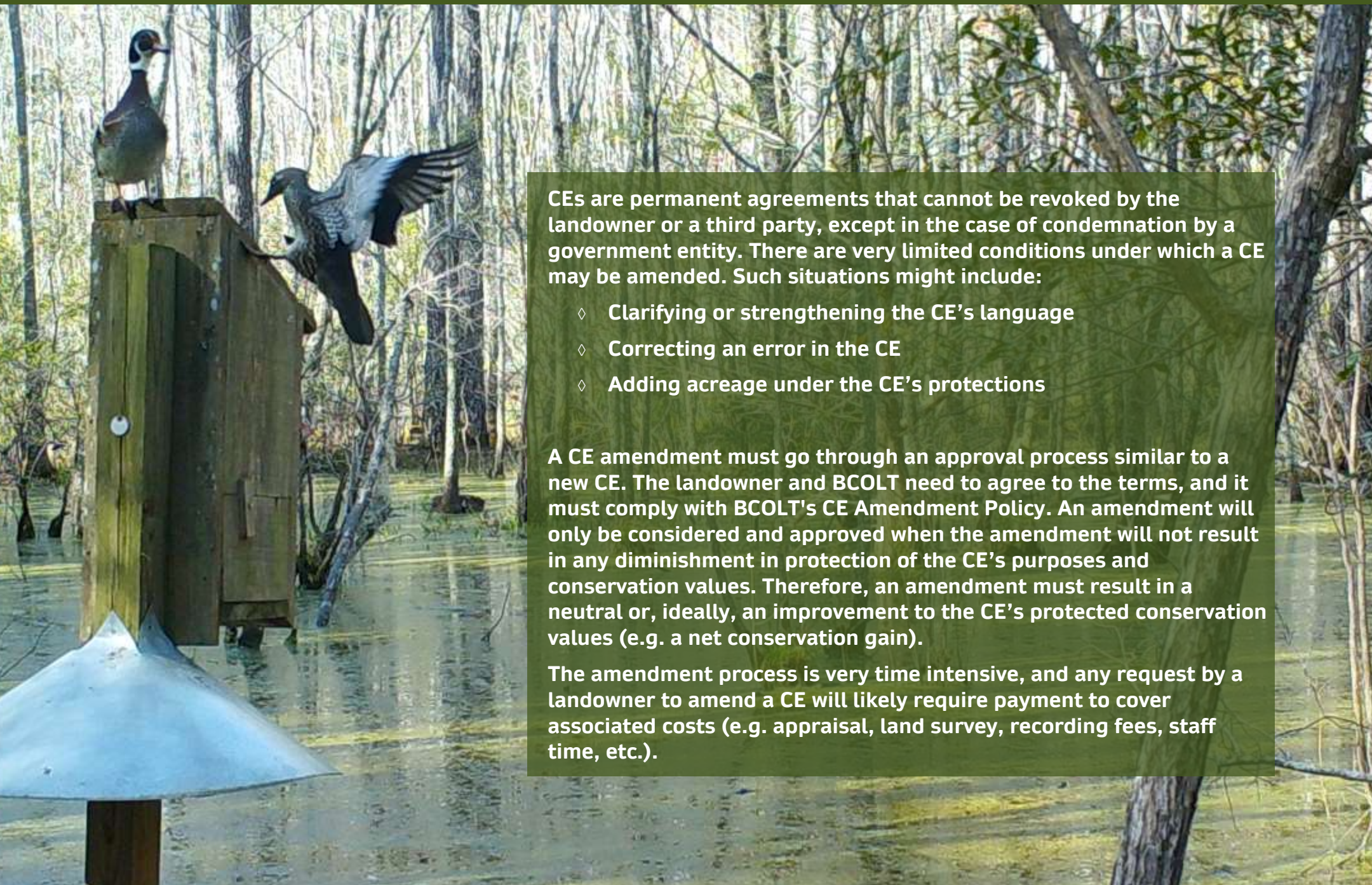
- ◇ Establish early contact with the new landowners to help them better understand the terms of the CE and answer any questions.
- ◇ Prevent violations from taking place because of a misunderstanding.
- ◇ Acquaint the new landowners with BCOLT and our staff.

In addition, if a utility company or government entity (such as SCDOT) contacts you about purchasing or condemning some of your property rights (for example, due to road expansion or construction of utility services infrastructure), please notify BCOLT immediately and we will work with you for an outcome that protects the conservation values of the property.

We also ask you to let us know if you are planning to transfer legal ownership within your own family, to a real estate trust, or to a limited liability corporation, as we need to maintain records of the correct legal ownership for all of our CE properties.



CAN A CONSERVATION EASEMENT BE AMENDED OR REMOVED?



CEs are permanent agreements that cannot be revoked by the landowner or a third party, except in the case of condemnation by a government entity. There are very limited conditions under which a CE may be amended. Such situations might include:

- ◇ Clarifying or strengthening the CE's language
- ◇ Correcting an error in the CE
- ◇ Adding acreage under the CE's protections

A CE amendment must go through an approval process similar to a new CE. The landowner and BCOLT need to agree to the terms, and it must comply with BCOLT's CE Amendment Policy. An amendment will only be considered and approved when the amendment will not result in any diminishment in protection of the CE's purposes and conservation values. Therefore, an amendment must result in a neutral or, ideally, an improvement to the CE's protected conservation values (e.g. a net conservation gain).

The amendment process is very time intensive, and any request by a landowner to amend a CE will likely require payment to cover associated costs (e.g. appraisal, land survey, recording fees, staff time, etc.).



THE FRAMEWORK OF A CONSERVATION EASEMENT

PLEASE NOTE: the language, terms and content of your property's individual conservation easement (CE) supersedes the following. These descriptions are provided to give you a general outline of a BCOLT CE. If you have questions about current or future uses, permitted structures and/or proposed land use or management activities on your protected property, please consult your CE document and/or BCOLT staff. We also advise that you consult an attorney if you need legal advice or a substantive legal understanding of your CE terms.

Each CE is divided into ten sections.

Older CEs may appear different their layout and may simply list terms and conditions, prohibited or inconsistent uses and consistent uses or reserved rights sections, or elements of both.

SECTION 1: RECITALS/PREAMBLE

Describes the property subject to the CE and its conservation values, and the CE purposes.

- ◇ Identifies Owner/Grantor (property owner/granting the CE) and the Grantee (BCOLT).
- ◇ Provides background on the property and conservation easement, including location and geographical context.
- ◇ Describes the conservation values of the property and outlines conservation goals and objectives. These may include the protection of water quality, wildlife habitat, general ecological values, agricultural or forestry resources, historic resources, scenic resources, recreational values or educational values.
- ◇ May describe property areas subject to different levels of protection or management.
- ◇ Cites the South Carolina enabling statute for CEs (SC Code §27-8-10, et. seq. (The South Carolina Conservation Easement Act of 1991)) and how protection of the property fulfills specific state-established conservation purposes.
- ◇ Cites the Internal Revenue Code of 1986, Code §170(h) and the Treasury Regulations (for tax deductible easements) and the specific federally-established conservation purposes met by the protection of the property.

SECTION 2: GRANT OF EASEMENT, CONSERVATION PURPOSE

Owner conveys the conservation easement to Grantee/BCOLT. States the conservation purpose and the conservation values of the property.

SECTION 3: RIGHTS AND DUTIES OF GRANTEE (BCOLT)

Owner grants “Enforcement Rights” to Grantee (BCOLT), and if applicable, holders of third party rights of enforcement, to enforce the CE restrictions indefinitely.

Grants BCOLT the right to enter the property to inspect compliance with the terms of the CE. BCOLT staff will inform you of our intended visit and seek your permission prior to coming on the property. However, BCOLT typically reserved the right to enter the property without express permission where necessary to uphold our legal obligations to monitor and enforce the CE’s terms. BCOLT will make all reasonable efforts to schedule visits in consultation with the Owner and will only access the property at reasonable times and in a reasonable manner, as necessary to conduct routine annual monitoring and, in rare circumstances, to inspect for CE violations.

SECTION 4: DEFINITIONS

Contains the definitions of bolded terms used the CE and not defined elsewhere in the document.

SECTION 5: RESERVED RIGHTS OF OWNER

Establishes that Owner retains rights in property subject to the restrictions and limitations of the CE.

SECTION 6: SUBDIVISION

Identifies changes that are and are not permitted to the configuration of the property.

SECTION 7: IMPROVEMENTS

Outlines improvements that are permitted within each protection area and identifies improvements that are and are not subject to Notice and/or Approval by BCOLT. All structural development is prohibited unless listed in this section as a reserved/permitted right (allowed improvement).

Common permitted improvements: (Refer to your CE document for what is specific to your property. These examples are not exhaustive).

- ◇ Construction of residence(s) and other buildings (within designated building envelope if one has been established), often with additional terms (prior approval, building number and size limit, etc.)
- ◇ Dock/boat ramp
- ◇ Boardwalks
- ◇ Towers

SECTION 8: ACTIVITIES, USES AND DISTURBANCE OF RESOURCES

Identifies activities and uses that are either allowed or not allowed on the conserved property within each protected area. Also identifies uses and activities that are subject to Approval or Notice by BCOLT.

Common permitted activities and uses: (Refer to your CE documents for what is specific to your property. These examples are not exhaustive).

- ◇ Measures to improve wildlife habitat or native biotic communities
- ◇ Agricultural uses
- ◇ Forestry activities in accordance with a professional plan
- ◇ Recreational activities
- ◇ Limited vegetation pruning/cutting
- ◇ Removal of diseased or damaged trees and non-native or invasive species

Many activities listed under Sections 6, 7 and 8 require prior written Approval or Notice to BCOLT before undertaking. Refer to your specific CE for activities requiring “Approval” or “Notice”. Typically, you will need to notify BCOLT by written notice a minimum number of days (often 30) before commencing with certain activities, and if BCOLT’s written Approval is required, we likewise will have a set number of days (often 30) in which to respond to your request.

NOTE: All written Approval requests should be sent to: Beaufort County Open Land Trust, PO Box 75, Beaufort, SC 29901 or via email to: caylor@openlandtrust.com

SECTION 9: VIOLATIONS AND REMEDIES

Details the procedures for exercise of “Enforcement Rights,” including violation procedures. Identifies the legal remedies BCOLT can seek in the event of a violation of the terms of the CE.

SECTION 10: MISCELLANEOUS

Contains provisions generally applicable to both the Owner and BCOLT. Addresses amendment of an easement and outlines the limited circumstances under which the CE could be modified or terminated and BCOLT’s restitution rights. Outlines extinguishment or condemnation of the CE and assignment of the CE. May include a transfer fee provision. Outlines requirements for communication between the Owner and BCOLT in the event of a transfer. Includes contact information for both parties. Contains additional necessary legal explanations and language.

SIGNATURES

Signature pages executing, accepting and approving the grant of the CE, with official notarized signature by the Owner and BCOLT.

CE EXHIBITS

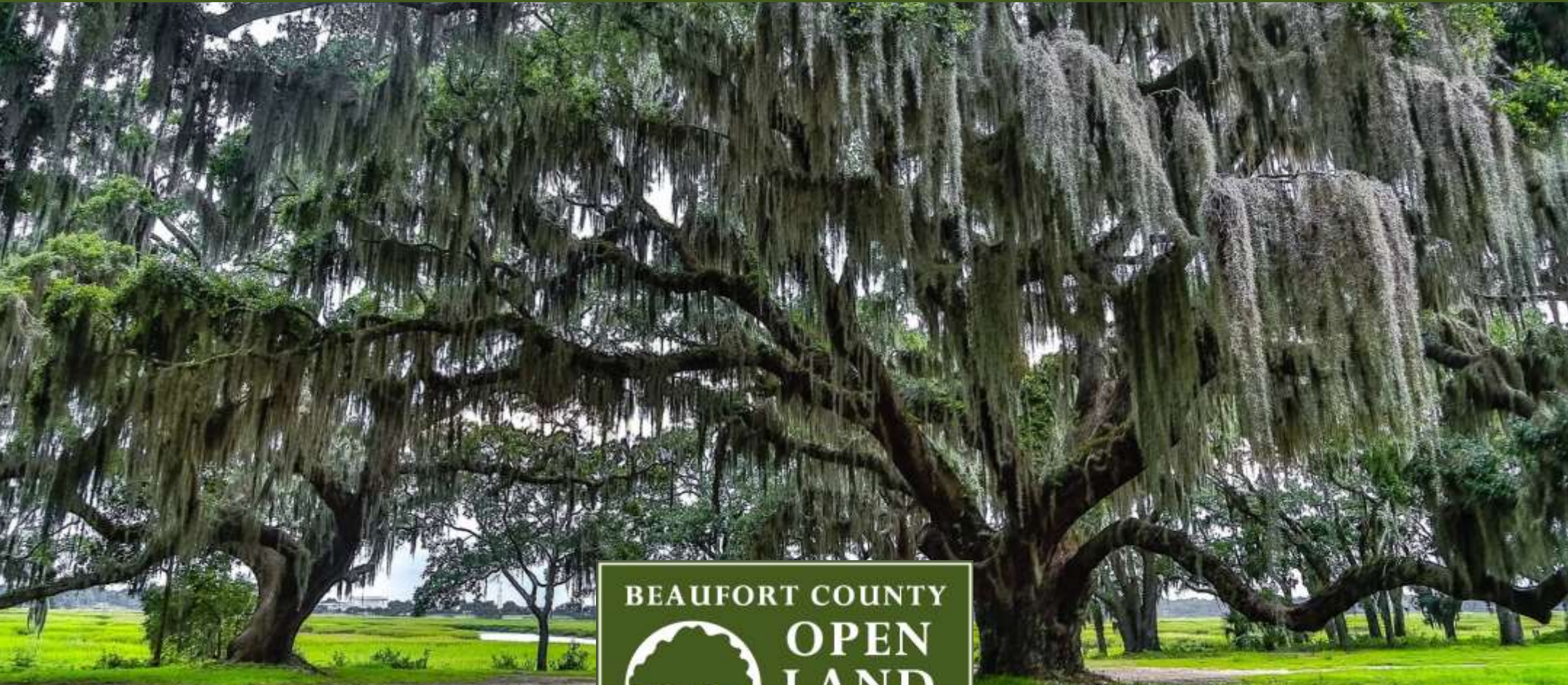
Contains the legal description of the property subject to the CE and an easement map or survey depicting this area. It may also define areas excluded from the CE, special use areas, or building envelopes.



The accreditation seal is awarded to land trusts meeting the highest national standards for excellence and conservation performance.



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