

## C O M M E N T

# Response to *Enhancing Conservation Options: An Argument for Statutory Recognition of Options to Purchase Conservation Easements*

by Liz McLaurin

Liz McLaurin is the president and CEO of The Land Trust for Tennessee. Notable among her projects for The Land Trust is her leadership in the revitalization of the 65-acre Glen Leven farm in Nashville.

**T**he Land Trust for Tennessee (Land Trust) was founded in 1999, as a statewide land conservation organization. Our bread and butter is the donated conservation easement, which differs from purchased easements whereby owners are compensated for extinguishing some development rights on their property. There is a significant federal tax deduction for donated easements and in some cases there are state deductions as well, but not in Tennessee. The largest *number* of Land Trust projects is in Middle Tennessee—particularly in Williamson County, which was Nashville’s farmland, and also in Davidson County—but the greatest *acreage* is in a place that has been identified in Tennessee as a place that is particularly resilient to climate change, the South Cumberland.

As Profs. Federico Cheever and Jessica Owley recognize, the Land Trust takes into account conservation purposes, including protecting prime agricultural soils, wildlife habitat, rare and endangered species, open-space for recreation, and scenic and historic view sheds. Over the past 17 years, the Land Trust has protected nearly 119,000 acres across the state. Last year was a record year—the Land Trust protected nearly 19,000 acres; whereas, the year before we protected about 6,000 acres. Due to development pressures, people are really jumping on the bandwagon and feeling the urgency to protect land.

There are not a lot of conservation organizations that have used options to purchase conservation easements. The Land Trust has used options to acquire land in fee, but for a very short period of time. For example, the Land Trust works with the Department of Defense around Fort Campbell through the Army Compatible Use Buffer Program. In some cases, the Land Trust has worked with pri-

vate land owners around the base and purchased options as a way to be sure that the Land Trust was investing its time and money wisely. Later the Land Trust did move forward with the purchase of an easement, using monies from the Department of Defense.

The authors’ concept of options is quite fascinating as it relates to climate change. In Tennessee, there already are changes in the habitat of some freshwater fish which are thriving in some places but not doing as well in others because of water temperature. For the Land Trust, prioritizing work related to climate change is a significant challenge. For a lot of land trusts it would be a big leap to really figure out *how* to prioritize work related to climate change and how to best use the options tool. It’s a big thing to think about, but it’s a very good thing to think about.

Here are a few points about options to consider. The first issue is transferability of an option from one generation to the next. Does the option stay in one family or one owner to the next if there is a sale involved? This would be important to nail down, because with a 50-year timeline or 100-year timeline that kind of transferability is key question.

Second, if an organization is investing philanthropic dollars, people expect—even if it is a long-term horizon—that an organization is going to do what it say it is going to do with their money. Donor intent is something that ethical nonprofits really hold dear, and that would be a concern of the Land Trust as well. For example, if an organization spends \$5,000 of somebody’s money to acquire an option in 2018 and 50 years later it does not exercise that option, it would be a rare donor who would say, “Yes, that’s an okay thing for you to do.” We have some of them in Nashville and in Tennessee, but they are rare.

The urgency issue is another concern related to donors. Donors like to see an immediate return on their investment. For example, the Land Trust is about to have two big celebrations with the Tennessee Department of Envi-

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ronment and Conservation for two major projects that were great partnerships, because celebrations rally people behind the next project. Urgency for funding is always a good thing, but philanthropy may not get so excited about options.

In addition, another complication is that acquiring options could entail monitoring responsibilities. When the Land Trust has an interest in a property, staff visit that property every year to assess the conservation value and

ensure that the easement is being upheld. Arguably, conservation organizations that acquire options would have a responsibility even without a conservation easement in place to take on the increased responsibility to monitor properties every year.

Despite these concerns, the article is very interesting. The whole staff of the Land Trust has reviewed it and will consider the recommendations in our work.