



Buncombe County Farmland Preservation Program

A Landowner's Guide to Conservation Easements



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Soil & Water
Conservation District



CONSERVATION
TRUST FOR NORTH CAROLINA





CONSERVATION EASEMENTS

A Conservation Easement (CE) is a legal agreement between a landowner and conservation organization. The landowner agrees to keep the land in its natural condition without development, thus protecting the farm, forest and natural resources on the property. The easement terms help to preserve the conservation value of the property and the agreement stays in place despite changes in ownership.

This process can take anywhere from 1-4 years depending on a variety of factors. A full donation easement may take 1-2 years to complete, whereas grant-funded easements may take 2+ years. Easements are a valuable tool to protecting your family land, but they are permanent decisions and we recommend doing the following before starting the process:

1. Talk to your family (ex. partner/children/siblings) about your interest in placing an easement on your property and why this decision is important to you. This will ensure that you are all on the same page about the future of the land.
2. Talk to your attorney, tax advisor and/or accountant about your decision. There are financial and legal implications surrounding easements and it is important that you discuss what these might be with whoever handles your finances. We can provide you with some general information, but we are not legal professionals and therefore cannot give you legal, tax or financial advice.
3. Contact us with any questions or concerns that you may have around this process. We are here to help!

Benefits of a Conservation Easement

Protects property from development pressure	✓
Protects family land for future generations	✓
Preserves farm heritage	✓
Protects natural resources such as, wildlife, open space, scenic views, prime agricultural soils, local food production, and food resilience	✓
Generous tax benefits can save you thousands of dollars a year	✓

Frequently Asked Questions

Does my land qualify for a Conservation Easement?

Farm or forestland greater than 14 acres qualifies for this program. Anyone can preserve their land, you do not need to be a farmer!

What can I do with my land after it's protected?

- You remain the owner
- Farm, hunt, and restrict public access
- Use the land as collateral on a loan, lease, sell, or allow generations to inherit the property
- Remain in control of your land management including, choice of crops, livestock, and conservation practices
- Increased eligibility for local, state, and federal tax benefits and programs
- Build agricultural structures within a designated farmstead area and build future homes on the land reserved on the survey

How is the value of a Conservation Easement calculated?

The value of a CE is determined by an appraiser by taking the fair market value of the property minus the value of land with restrictions.

Do I have to spend any money to do a Conservation Easement?

No. Our program has a variety of resources available to cover the costs associated with completing a CE. We will work with you to apply for state and federal funding which, if selected, provides for the development rights purchase, while Buncombe County covers the transaction costs. Transaction costs can also be covered by the County for donation easements. Additionally, a CE can save you thousands of dollars a year through tax benefits and incentives.

What tax benefits can I get from a Conservation Easement?

A CE provides generous tax benefits. The main benefits include the ability to continue in the Present Use Value Tax Program and the Enhanced Federal Tax Incentive for CE donations. This incentive allows a donor to deduct 50% of their annual income up to 15 years or until the total of the deductions reaches their donation value. Full-time farmers can deduct 100% of their income under the same conditions. Please contact your personal attorney or accountant to discuss how this could benefit you.

Can a Conservation Easement be reversed?

A CE protects your property from development pressure while also protecting your precious family land and natural resources. A CE is an investment into the protection of our farming community, natural resources and view sheds, for this reason a CE cannot be reversed.





Steps in the Conservation Easement Process

The conservation easement (CE) process can take anywhere from 1-4 years depending on a variety of factors. A full donation easement may take 1-2 years to complete, whereas grant-funded easements may take more. We hope that this list will provide you, the landowner, with a broad overview of the steps in closing an easement. PLEASE NOTE: County staff will be coordinating most of this work. We will check in with you about setting up survey or site visits when needed and will send over documents for your review before we close the easement. However, much of this work will be conducted by the staff and our contractors. This list is not comprehensive, but we have tried to give you an overview before diving into the details (which we will talk through as we go along or as you have questions!).

1. Initial Evaluation & Site Visit (2-4 months):

- Initial conversation with landowner and provide informational material
 - Discussion of landowner's goals for the property
- Landowner completes and returns easement application
- Staff reviews application, prepares maps, and gathers information about property
- Staff evaluates the application in accordance with the BCSWCD Farmland Preservation selection criteria, visits the site, and photographs the land with the landowner

2. Agriculture Advisory Board (AAB) Approval Process (2 months):

- Staff introduces the project to the Board, and at least two Ag Advisory Board members visit the farm with landowner
- Landowner visits an Ag Advisory Board meeting to discuss objectives
- Ag Advisory Board approves the easement project
- Staff requests transaction costs from County Commissioners through budget amendment
- Landowners (all parties involved: landowners, spouses, anyone on the deed) sign the Letter of Intent

3. Funding Process (only if project is grant-funded, for donation easements proceed to 5) (1-2 years):

- Sign written agreement to move forward with the easement process
- Get Forest Management Plan (if greater than 20 acres of forest)
- Get signed Landowner Donation Letter
- Staff applies for state and/or federal grants (submit in December)
- State and/or Federal Grant farm visit in Spring
- Receive notification of funding from State and/or Federal Grant

4. Due Diligence (1-2 years):

- Survey Process
 - Meet with landowners on site

- Finalize house site and farmstead locations
- Landowner and staff review preliminary survey and make edits
- Record conservation easement survey a couple of weeks before closing
- Environmental Assessment
- Baseline Documentation Report (BDR)
 - Field Visit and Mapping
 - BDR Landowner review
- Appraisal
 - Funding and/or IRS
- Legal Work
 - Title work, legal access from public road, etc.
 - Conservation Easement Deed and Deed Exhibits
 - Title Insurance

5. Conservation Easement Closing (1 day):

- Landowner signs Conservation Easement Deed and BDR
- Signed Easement Deed is recorded at the register of Deeds

6. Post-closing (1-2 months):

- Mark Conservation Easement boundary with BCSWCD Farmland Preservation Signs
- Ensure landowner has IRS compliant appraisal & accompanying documents needed for tax benefits
- Soil and Water sends landowner a Landowner Donation Letter for tax purposes
- Landowner requests BCSWCD signature of IRS Appraisal Summary Form 8283 for tax credits





USING THE CONSERVATION TAX INCENTIVE

In 2015 Congress enacted one of the most powerful conservation measures in decades: the enhanced federal tax incentive for conservation easement donations.

The permanent conservation easement tax incentive is a powerful tool that helps Americans conserve their land voluntarily.

For land trusts across the country, the permanent incentive represents vastly increased opportunities to protect the special places in their widely varied communities.

If you own land with important natural, agricultural or historic resources, donating a conservation easement can be a prudent way to both save the land you love forever and to realize significant federal tax savings.

This short brochure summarizes the conservation easement tax incentive and provides answers to some frequently asked questions. For the latest information and for guidance on individual properties, please contact your local land trust, which can be located at www.findalandtrust.org.



FREQUENTLY ASKED QUESTIONS

WHAT IS A CONSERVATION EASEMENT?

A conservation easement, also called a conservation agreement, is a voluntary and legally binding agreement between a landowner and a land trust or government agency.

When a landowner donates an easement to a land trust or public agency, she or he is giving away some of the rights associated with the land. The easement permanently limits uses of the donated parcel in order to protect its conservation values, as specified in the Internal Revenue Code (IRC) 170(h).

Conservation easements offer private landowners flexibility in protecting their land. For example, a donating landowner can retain the right to grow crops on a parcel while, at the same time, relinquishing the right to build additional structures on the parcel.

The land trust is responsible for making sure that a landowner adheres to the conservation terms of the easement. An easement may apply to all or a portion of the property and may or may not allow for public access to the property. A landowner who has donated a conservation easement can sell the land or pass it on to heirs, and future owners of the property are bound by the terms of the easement.

HOW DOES THE PERMANENT, ENHANCED TAX INCENTIVE WORK?

If a conservation easement is voluntarily donated to a land trust or government agency, and if it benefits the public by permanently protecting important conservation resources, it can qualify as a charitable tax deduction on the donor's federal income tax return.

First enacted temporarily in 2006, the tax incentive was made permanent in 2015 and increases the benefits to landowners by:

- Raising the deduction a donor can take for donating a conservation easement to 50%, from 30%, of his or her annual income;

- Extending the carry-forward period for a donor to take a tax deduction for a conservation agreement to 15 years from 5 years; and
- Allowing qualifying farmers and ranchers to deduct up to 100% of their income, increased from 50%.

Easements vary greatly in value. In general, the highest easement values are found on tracts of open space under high development pressure. In some jurisdictions, placing an easement on one's land may also result in property tax savings for the landowner.

1. What is an example of the financial benefit that the permanent tax incentive provides a landowner?

Prior to 2015, a landowner earning \$50,000 a year who donated a \$1 million conservation easement could take a \$15,000 deduction (30% of his or her income) for the year of the donation and for an additional five years, generating a total of \$90,000 in tax deductions.

The new, permanent incentive allows that landowner to deduct \$25,000 (50% of income) for the year of the donation and for each of an additional 15 years. This would result in a total of \$400,000 in deductions.

If the landowner is a farmer or rancher, he or she can deduct \$50,000 (100% of income) in the first year and then for each of the following 15 years, realizing a maximum of \$800,000 in deductions.

2. Can anyone deduct more than the value of his or her gift of an easement?

One can never deduct more than the fair market value of the gift. The permanent incentive simply allows landowners to deduct more of that fair market value.



3. Who qualifies as a farmer or rancher?

The 2015 law defines a farmer or rancher as someone who receives more than 50% of his or her gross income from “the trade or business of farming.” The law references IRC 2032A(e)(5) to define activities that count as farming, including:

- Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training and management of animals) on a farm;
- Handling, drying, packing, grading or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant or operator of the farm regularly produces more than one-half of the commodity so treated; and
- The planting, cultivating, caring for or cutting of trees, or the preparation (other than milling) of trees for market.

For an easement to qualify for a farmer or rancher, it must contain a restriction requiring that the land remain “available for agriculture.” This provision also applies to farmers who are organized as C corporations. Additionally, Alaska Native Corporations are eligible as farmers or ranchers.

4. Do these changes apply to gifts of land?

The expanded incentive does not apply to gifts of land in fee. It only applies to gifts that qualify under IRC 170(h)(2), such as conservation easements. A landowner considering the donation of land should consult an attorney to determine whether the structure of his or her gift should be changed to take advantage of the permanent incentive.

5. When does the permanent incentive apply?

The permanent incentive applies to all conservation easements donated after December 31, 2014.

6. What other restrictions apply?

Conservation easement donations must comply with “conservation purposes” as defined in IRC 170(h). A donated easement must be a true gift. It must protect significant natural, agricultural or historic resources that public agencies or land trusts want to have conserved. A donated easement cannot serve to simply prevent development on a property or be part of a “quid pro quo” agreement in exchange for a government action, such as issuance of a building permit or a zoning change.

7. Will donors who use this provision be audited by the IRS?

Taking advantage of the 2015 law should not affect one’s likelihood of being audited. However, all donors should note that the IRS does pay attention to donations of property that are high in value, including donations of conservation easements.

This makes it important for donors and their advisors to know and follow the law, utilize a reputable professional appraiser who has experience in the appraisal of conservation easements and donate to a well-established, reputable land trust that has adopted and implemented *Land Trust Standards and Practices*.

WHAT IS THE ROLE OF THE LAND TRUST?

Voluntarily donating a permanent conservation easement is a major commitment for a landowner that requires careful planning and independent legal advice.

Donating an easement also necessitates a strong working partnership with a land trust. A landowner should allow sufficient time for the careful drafting of baseline documentation, creation of maps and production of a professional property appraisal. Land trusts will want to review the appraisal before accepting the gift, and landowners should understand that a land trust may decline to accept a donation that does not meet both the legal requirements and the land trust’s charitable mission and strategic plan.



ACKNOWLEDGEMENTS

There are many people to thank for the 2015 conservation tax incentive victory. We extend one grand thank you from the Alliance to all of you.

The Alliance has been leading a team effort to achieve this since 2000, when we convened land trust leaders from across the country to build a consensus on what tax policies would best address the need to expand land conservation.

This legislation would not have happened without the leadership of Senators Dean Heller (NV) and Debbie Stabenow (MI), Representatives Mike Kelly (PA) and Mike Thompson (CA), and many of their colleagues. These leaders know that the conservation work of land trusts is important to their communities and broadly supported by their constituents.

For the latest information visit www.lta.org/policy.

ABOUT THE ALLIANCE

Founded in 1982, the Land Trust Alliance is a national conservation organization representing over 1,100 land trusts. The Alliance works to save the places people need and love by strengthening land conservation throughout America. Please visit our website at www.landtrustalliance.org for more information on:

- Finding a local or regional land trust
- The latest federal tax laws concerning conservation easement donations
- Examples of how private landowners work with land trusts to protect their land
- Publications and resources for landowners



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Supplementary Information

The following handouts provide more detailed information about conservation easements.



Protecting Your Farm With a Conservation Easement

Sustaining Working Farms Through Conservation



A PARTNERSHIP OF NC LAND TRUSTS, THE NC FARM TRANSITION NETWORK AND THE NC TOBACCO TRUST FUND COMMISSION

North Carolina
LAND TRUSTS
Saving the Places You Love



One of the most effective tools for protecting working farms in North Carolina is a conservation easement. Conservation easements have been used across North Carolina to protect farms from development and provide financial benefits to farmers.

What is a conservation easement?

A conservation easement is a written agreement between a landowner and a qualified conservation organization (land trust) or public agency under which:

- ▶ the landowner (Grantor/Donor) agrees to keep the land available for agriculture and/or forestry and restrict subdivision or non-farm development and other uses that are incompatible with commercial agriculture and forestry.
- ▶ the conservation organization or public agency (Grantee) is responsible for monitoring the easement to ensure the terms of the easement are met.

How do agricultural conservation easements protect productive farmland?

Agricultural conservation easements:

- ▶ are designed to keep land available for farming and forestry.
- ▶ are tailored to meet the property owner's goals and needs.
- ▶ may allow homesites to be reserved for family members.
- ▶ may permit new buildings related to the farm operation.
- ▶ may place minimal requirements on farming practices, typically requiring implementation of best management practices.

After granting an agricultural conservation easement, landowners:

- ▶ retain ownership of their property.
- ▶ may be eligible for federal and state tax benefits.
- ▶ remain eligible for the present use property tax program.
- ▶ can still farm, hunt and restrict public access on their property.
- ▶ may use the land as collateral for a loan and lease or sell the property.
- ▶ are still eligible for federal and state farm programs.

Land subject to an easement remains on the local tax rolls.

What are the benefits of conservation easements for farmers and landowners?

To receive federal and state tax benefits, agricultural conservation easements must be permanent and a portion of the easement value donated. Landowners can pass the land along to heirs or sell the property, but future owners must abide by the terms agreed to in the easement.

Conservation easements can be donated or, depending on the availability of funding, may be purchased by a land trust or local, state, or federal program. North Carolina farmers who donate conservation easements are providing a significant public benefit and as a result, can take advantage of a variety of tax incentives, including a federal income tax deduction, a state income tax credit, and possible estate tax benefits.

CONTACT INFORMATION

For additional information about conservation easements and/or how a land trust can help you protect your farmland, please contact:

One of North Carolina's
24 local land trusts:

Black Family Land Trust
919-682-5969 www.BFLT.org

Blue Ridge Rural Land Trust
828-263-8776 www.brrlt.org

Carolina Mountain Land Conservancy
828-697-5777 www.carolinamountain.org

Catawba Lands Conservancy
704-342-3330 www.catawbalands.org

Davidson Lands Conservancy
704-892-1910 www.davidsonlands.org

Eno River Association
919-620-9099 www.enoriver.org

Foothills Conservancy of North Carolina
828-437-9930
www.foothillsconservancy.org

High Country Conservancy
828-264-2511
www.highcountryconservancy.org

Highlands-Cashiers Land Trust
828-526-9938

Land Trust for the Little Tennessee
828-524-2711 www.ltlr.org

LandTrust for Central North Carolina
704-647-0302 www.landtrustcnc.org

Lumber River Conservancy
910-522-5751

National Committee for the New River
336-982-6267 www.ncnr.org

North Carolina Coastal Land Trust
910-790-4524 www.coastallandtrust.org

North Carolina Rail-Trails
919-542-0022 www.NCRail-Trails.org

Northeast New Hanover Conservancy
910-686-1554

Pacolet Area Conservancy
828-859-5060 www.pacolet.org

Piedmont Land Conservancy
336-691-0088 www.piedmontland.org

Sandhills Area Land Trust
910-695-4323 www.sandhillslandtrust.org

Smith Island Land Trust
910-457-0089 www.bhic.org
A subsidiary of Bald Head
Island Conservancy

Southern Appalachian
Highlands Conservancy
828-253-0095
www.appalachian.org

Tar River Land Conservancy
919-496-5902 www.tarriver.org

Triangle Greenways Council
919-715-4191 www.trianglegreenways.org

Triangle Land Conservancy
919-833-3662 www.tlc-nc.org

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www.ctnc.org



CONSERVATION TRUST
FOR NORTH CAROLINA

What are the tax benefits of donating a conservation easement?

By donating an easement, qualified farmers are eligible for a federal tax deduction of up to 100 percent of a farmer's adjusted gross income, which can be carried forward for 15 years for donations made through 2009. Donations made after 2009 may return to the standard cap on deduction of 30 percent. This deduction can be especially helpful to tobacco buyout participants who are seeking to reduce their income tax liability from the proceeds of the buyout program. Farmers and landowners placing their land under a permanent conservation easement are eligible for a state income tax credit equal to 25% of the donated value of the easement up to \$250,000, which can be carried forward for five years. Placing a conservation easement on a property also reduces the property's value in the owner's estate, resulting in a lower estate tax.

How are conservation easements valued for tax purposes?

The value of an agricultural conservation easement is generally the fair market value of the property minus its restricted value according to the terms of the easement agreement, as determined by an appraiser. In general, more restrictive agreements and intense development pressure result in higher easement values.

Easement Value = Fair Market Value of Land – Value of Land With Restrictions

How do I get more information about how conservation easements can protect my farm?

For more detailed information about conservation easements, please contact your local land trust and/or consult the publication, "Voluntary Conservation Agreements: An Introduction for North Carolina Landowners," available from the Conservation Trust for North Carolina at www.ctnc.org or from local land trusts at no charge. Before finalizing a conservation easement, as with any real estate transaction, landowners should consult their legal and tax advisors.

For more information contact:

Conservation Trust for North Carolina: www.ctnc.org, 919-828-4199

Soil and Water Conservation Districts: <http://www.enr.state.nc.us/DSWC/>

NC Farm Transition Network: www.ncftn.org, 919-782-1705

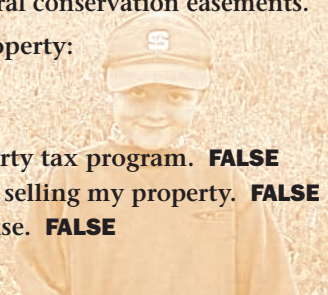
NC Agricultural Development and Farmland Preservation Trust Fund:
<http://www.ncadfp.org/>, 919-733-7125

FIVE MYTHS ABOUT CONSERVATION EASEMENTS

The following are common misperceptions about agricultural conservation easements.

Placing an agricultural conservation easement on my property:

1. requires that I grant the public access. **FALSE**
2. prohibits farming, logging and hunting. **FALSE**
3. will remove my farm from the present use value property tax program. **FALSE**
4. prevents me from passing my land along to my heirs or selling my property. **FALSE**
5. will dictate what crops and livestock I can produce/raise. **FALSE**



VOLUNTARY CONSERVATION AGREEMENTS

*An Introduction for
North Carolina Land Owners*



North Carolina
LAND TRUSTS
Saving the Places You Love

Produced by: Conservation Trust for North Carolina on behalf of

North Carolina LAND TRUSTS

Saving the Places You Love

with funding from WalMart



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Left: Marian and Ezra Gilliam, farm protected by LandTrust for Central North Carolina; photo by CTNC.

Right: Bird Island, protected by N.C. Coastal Land Trust; photo by N.C. Coastal Land Trust.

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Left: Frances Austin at Lindale Farm, protected by Piedmont Land Conservancy; photo by Virginia Weiler.

Right: Burston Hewett, farm protected by N.C. Coastal Land Trust; photo by N.C. Coastal Land Trust.

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*For current information on specific tax advantages of each type of
conservation property transaction, see the flyer in the middle of this book.
If the flyer is missing, contact the Conservation Trust for North Carolina, 919-828-4199.*

Saving the Places You Love



A conservation agreement is an effective means of protecting land in North Carolina. Conservation agreements (also called conservation easements) have been used to protect lands as varied as mountain ridgetops, Piedmont river corridors, farms, working forests and coastal marshes.

Conservation agreements enable landowners to preserve their land and maintain ownership of it while potentially realizing significant economic benefits. Landowners may sell a conservation agreement if funds are available, or they may receive tax savings for donating a conservation agreement.

This brochure is designed to answer the basic questions that a landowner might have about conservation agreements. It is not intended to provide legal advice. As with any real estate transaction, landowners should consult their personal legal, financial and tax advisors before finalizing a conservation agreement.

Contact your local land trust to discuss conservation options that may be available for your property. North Carolina's local land trusts are listed on the last page of this booklet, and further information about them and the counties they serve is available at www.ctnc.org/lmap.

What is a conservation agreement?

A conservation agreement (or conservation easement) is a written agreement between a landowner and a qualified conservation organization or public agency, in which:

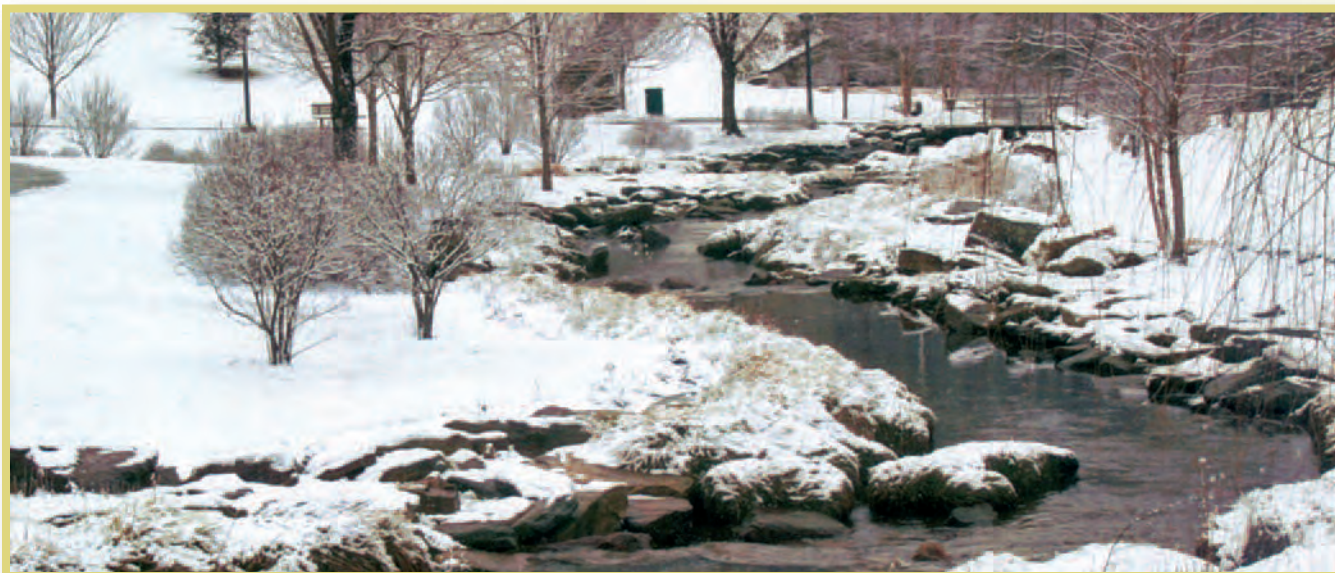
- the landowner (also called grantor or donor) promises to keep his or her land in its natural condition without extensive disturbance, and
- the conservation organization or public agency (also called grantee) has the right to monitor the property and enforce the terms of the agreement.

A conservation agreement is similar to restrictive covenants in a subdivision in that it restricts various uses of land. Each conservation agreement is voluntary and tailored to meet the needs of the landowner while protecting the property's natural assets.

There are different types of conservation agreements, and they go by different names. For example, a conservation agreement may also be referred to as a deed of conservation easement, a grant of development rights, a historic preservation agreement, a farmland agreement, a facade easement, a working forest easement, a water quality easement or an agricultural easement.

Conservation agreements are intended to preserve undeveloped property, and provide a benefit to the public by conserving open lands, forests, wildlife habitat, scenic vistas, farmland, stream banks and other significant natural resources.

Because of this public benefit, landowners who donate conservation agreements are eligible for significant federal, state and local tax incentives. In addition, grant programs exist to purchase conservation agreements from landowners who have eligible property but may not be in a position to donate an easement.





When is a conservation agreement the right method for land protection?

To begin with, the land itself must contain significant natural resources such as forestland, wildlife habitat, stream buffers or farmland, or provide scenic enjoyment from public locations so that the public will benefit from its protection.

Conservation agreements work best when:

- the landowner is motivated by the desire to conserve and preserve the land,
- the land is not heavily developed or subdivided,
- the land does not require intensive management, and
- current and future uses of the land are compatible with preservation of its natural features.

A conservation agreement is not generally a good tool for landowners who want to maximize their financial return from their land. However, if a landowner is interested in receiving either **tax benefits** (such as a federal income tax deduction, state income tax credit or a reduction in estate taxes) or a **cash payment that is less than the value of the property if it were to be developed**, then a conservation agreement may be a good option to consider.

How long does a conservation agreement last?

Under North Carolina law, a conservation agreement may be created for a period of years or it may be permanent. A landowner who wants to claim federal and state income tax benefits must agree to a permanent easement. In addition, most grant programs that provide funds for the purchase of conservation agreements require that the agreements last forever.

What restrictions are contained in a conservation agreement?

A conservation agreement's restrictions are tailored to the particular conservation values of the land and interests of the landowner and grantee. Some activities that may be prohibited or restricted include industrial use or commercial development, mineral development or exploration, subdivision, residential use, access for road or power line construction, and extensive timbering.

What current and future uses do conservation agreements allow?

Depending on the size and character of the land, conservation agreements may allow limited subdivision of the land, timbering and forest management, agricultural use, wildlife management, hunting and fishing, or even the construction and maintenance of a limited number of buildings or homes.

Can I put some land into the conservation agreement and leave some land out?

Sometimes it may be appropriate to make only part of a tract subject to a conservation agreement and reserve a portion for other uses. Some landowners may use different types of conservation agreements for different areas of their property. For example, a landowner might use an agricultural agreement on upland farm fields and a more restrictive conservation agreement on adjoining riverbank lands.



Who is responsible for maintaining the property?

The landowner retains ownership along with the right and duty to manage and care for the property. In cases where the conservation organization has experience in managing a property's particular natural assets (for example, rare species habitat), it may be appropriate for the organization to be given the right or opportunity to undertake certain land management tasks.

Will a conservation agreement reduce the property taxes on my land?

Maybe. North Carolina requires county tax assessors to consider the reduction in property value caused by the granting of any conservation agreement. The land owner should apply to the local tax assessor for a change in the ad valorem tax value of land after a conservation agreement is granted, and may find that the tax bill is lowered as a result. However, if the land is already in a "special use" program, such as forestry use or farm use, there may be little, if any, additional property tax savings as a result of the conservation agreement.

What organizations may accept conservation agreements?

Conservation agreements may be granted to nonprofit tax-exempt conservation organizations such as a land trust or conservancy, or to public agencies such as the State of North Carolina, counties and towns.

Will my land be accepted under a conservation agreement program?

It depends. Factors that must be considered include your land's natural assets, the capacity of conservation organizations that serve your area, and the availability of funding. If you wish to sell a conservation agreement, be aware that programs that fund these purchases follow specific criteria, are highly competitive and may have limited assets depending on the current economic climate and other conservation projects being considered.

Several state and federal programs have funds available for the purchase of conservation agreements. They include the North Carolina Clean Water Management Trust Fund, NC Natural Heritage Trust Fund, NC Agricultural Development and Farmland Preservation Trust Fund, NC Parks and Recreation Trust Fund, federal Forest Legacy Program, and federal Farm and Ranchland Protection Program.

The best way to find out whether your land has conservation value is to contact your local land trust. A representative will talk with you about your property and may arrange for a site visit. North Carolina's local land trusts are listed in the back of this document and at www.ctnc.org/lmap.



What rights and obligations does a conservation agreement create in the grantee/conservation organization?

The grantee/conservation organization is required to monitor and enforce the terms of the conservation agreement. Thus, the agreement must allow the organization access to the property at least annually. The parties may also agree to allow the organization access for scientific research and occasional field trips.

If the landowner reserves rights, such as the right to timber or to subdivide, the grantee may be required to review and approve the exercise of such rights.

The grantee must maintain sufficient assets to finance its monitoring and enforcement obligations into the future. Therefore, organizations that agree to hold conservation agreements must have a stewardship fund or endowment for this purpose, and will usually raise money to add to this fund whenever a new conservation agreement is signed. The grantor and others interested in the project are generally asked to contribute.

Is the conservation agreement a private or public document?

A conservation agreement is a public document like any other land deed, easement or similar legal document, and must be recorded in the Registry of Deeds in the county where the land is located.

Grantee organizations may publicize the gift depending on the preference of the landowner. For example, a corporation may welcome the goodwill generated by protecting natural areas, while a family may prefer relative anonymity.

Will the public have access to land under a conservation agreement?

A conservation agreement does not generally require or allow entry by the public. There are two exceptions:

- a) If the conservation values of the property include its scenic character, then the public must be able to *see* the land; and
- b) If the conservation values of the property include public recreation, such as a hiking trail, then the public must have *physical access* to the land.

Since most conservation agreements protect lands that have much broader conservation values (for example, significant natural systems, wildlife or plant habitat, or forestland and farmland), they do not include public access to the land.

Can the land be sold, mortgaged or bequeathed after a conservation agreement is granted?

Yes, landowners may sell, mortgage or otherwise convey a property with a conservation agreement.

However, the land will remain subject to the conservation agreement. For example:

- The value of the land as security will be its value as restricted by the agreement, not its potential value for all unrestricted purposes and uses;
- The property may be subdivided only as permitted by the agreement;
- Any rights reserved by the grantor will be passed to any heir or purchaser.

If there is a pre-existing deed of trust on the land, it must be subordinated to the conservation agreement before the agreement is granted.



Can a conservation agreement be amended or revoked?

Because conservation agreements are designed to be permanent, amendment or revocation is difficult. Revocation is usually accomplished only through a court proceeding and depends upon demonstrating that the original conservation purposes of the agreement can no longer be sustained due to a change in circumstances (for example, significant changes in the use of surrounding land).

If the conservation agreement is extinguished, the interest in the land (or the proceeds from any sale) is allocated between grantee and grantor, respectively, in proportion to the value of the conservation agreement and the value of the land.



In unusual circumstances an easement can be amended, but only with the agreement of both parties. This is usually done to clarify an ambiguity in the easement. Amendments will not be allowed if they diminish protection measures for the conservation values protected by the conservation agreement or somehow enrich the landowner without properly compensating the grantee.

What are the pros and cons of *selling* a conservation agreement?

The primary advantage of selling a conservation agreement is the actual net cash received. If a grant award funds the purchase, it may also pay for any stewardship endowment needed. However, funds for purchases of conservation agreements are scarce and the grant process is very competitive. Therefore, grants frequently do not cover the entire value of the conservation agreement being sold. If the landowner is willing to sell the conservation agreement for less than its value (a “bargain sale”), then the landowner may claim a federal tax deduction and state tax credit for the difference between the sale price and the appraised value of the conservation agreement. Like any other sale of property, any sales proceeds are subject to capital gains taxes.

The disadvantage of selling a conservation agreement derives from the fact that purchase funds typically come from government grants. This requires the land trust to go through an application process to receive the grant, and requires government agency review of appraisals, survey, title and all other documentation. Purchase of a conservation agreement can take years to complete. Some government grants require that the government agency, rather than the land trust, be the grantee of the conservation agreement.

What are the pros and cons of *donating* a conservation agreement?

Apart from protecting sensitive natural resources, the primary advantages of donating a conservation agreement are tax benefits that the landowner may claim (see flyer insert for current information on the North Carolina Conservation Tax Credit and federal tax deductions for donated easements). A conservation agreement may be donated within a matter of months, while a sale may take longer to finalize. The majority of conservation agreements are donated rather than sold.

Regardless of whether the conservation agreement is sold or donated, land trusts must secure adequate funds for a stewardship endowment to finance future monitoring of the conservation agreement. The land trust will explain this cost and may seek a gift in this amount from the landowner as part of the transaction.

Will I receive tax benefits for donating a conservation agreement?

A landowner who donates a conservation agreement may be able to claim the donation as a charitable contribution. To qualify as a charitable contribution for



federal tax purposes, a conservation agreement must be permanent, it must be made to a qualified grantee (generally a nonprofit organization or a public agency), and it must meet one or more of the following conservation purposes:

- protection of relatively natural habitat of fish, wildlife or plants;
- preservation of open space including farm and forestland;
- preservation of land for public outdoor recreation or education;
- preservation of historically important land or buildings;
- protection of scenic views.

What are the tax advantages from donating a conservation agreement?

The donor of a qualifying conservation agreement may claim the value of the conservation agreement as a deduction for income, gift and estate tax purposes.

Tax laws are occasionally revised, so please refer to the insert in the center of this booklet for details of current federal and North Carolina tax benefits.

How is the value of a conservation agreement determined?

To determine a conservation agreement's value, a licensed appraiser uses a "before and after test" in which the value of the property as restricted by the conservation agreement is subtracted from the value of the property before the restrictions were granted. The difference between the two calculations is the value of the conservation agreement.

The presence of a conservation property provides a benefit to adjacent land, resulting in added value for the neighboring parcels. If granting a conservation agreement has this effect on any other property owned by the donor or donor's family, the appraiser must reduce the value of the donated conservation agreement by the amount of the benefit to the other property.

Whenever possible, a professional appraiser familiar with both the local real estate market and conservation agreements should undertake the appraisal.

- If a conservation agreement is **donated**, it is the landowner's responsibility to provide an appraisal to the IRS, the state and the land trust. There are substantial penalties imposed on both the donor and the appraiser for fraudulent overvaluation used in claiming a charitable contribution. The donor, appraiser and the grantee of the conservation agreement must all review and sign IRS tax form 8283 in order for the donor to claim a federal income tax deduction.
- If a conservation agreement is **purchased for its appraised value**, then the grantee of the agreement must secure an appraisal that substantiates the purchase price.
- If a conservation agreement is **purchased for less than its appraised value** (a "bargain sale") and the landowner seeks tax benefits for the difference between the sale price and the value, then the landowner must provide an appraisal to the IRS, the state and the land trust.

What is required to complete and convey a conservation agreement?

For a landowner to donate a conservation agreement that qualifies for a federal tax deduction and/or state tax credit, the following documents must be prepared:

- Conservation agreement (drafted by either the grantee's or the grantor's attorney and agreed upon by all parties)
- Baseline documentation report of the property (prepared by land trust staff, a biologist, planner or other consultant; see below)
- Qualified independent appraisal
- Title work (prepared by an attorney)
- Survey and legal description (prepared by a surveyor)
- Subordination of any deeds of trust and mineral rights
- IRS Form 8283 (to be attached to the federal tax return of all individuals claiming charitable contributions more than \$5,000, prepared by the grantor or his accountant, and signed by the grantor, grantee and appraiser)
- Environmental assessment of the property for hazardous materials, also known as a "Phase I Report"
- Owner's affidavits and certifications

If a landowner is selling a conservation agreement, all documents are subject to review by the funding source(s) and the agreement's grantee.

In either case (sale or donation), an inventory of the property called a "baseline documentation report" is required to document the condition of the property, any improvements and its conservation values at the time the transaction is completed. This report includes maps, photographs of existing improvements such as buildings and roads, and a description of natural habitats. The report identifies areas where reserved rights (such as timbering or future home sites) are permitted and more ecologically sensitive areas where such uses might not be allowed as determined in the conservation agreement.



North Carolina's Land Trusts

For additional information about conservation agreements, please contact:

Land Trust Alliance

Southeast Program

P.O. Box 33355

Raleigh, NC 27636

(T) 919.515.0760

(F) 919.515.0767

southeast@lta.org

www.landtrustalliance.org/community/southeast

Conservation Trust for North Carolina

1028 Washington St.

Raleigh, NC 27605

(T) 919-828-4199

(F) 919-828-4508

info@ctnc.org

www.ctnc.org

One of North Carolina's local land trusts:

Black Family Land Trust	919-682-5969	www.bflt.org
Blue Ridge Conservancy	828-264-2511	www.blueridgeconservancy.org
Carolina Mountain Land Conservancy	828-697-5777	www.carolinamountain.org
Catawba Lands Conservancy	704-342-3330	www.catawbalands.org
Davidson Lands Conservancy	704-892-1910	www.davidsonlands.org
Eno River Association	919-620-9099	www.enoriver.org
Foothills Conservancy of North Carolina	828-437-9930	www.foothillsconservancy.org
Highlands-Cashiers Land Trust	828-526-1111	www.hicashlt.org
Land Trust for the Little Tennessee	828-524-2711	www.ltl.org
LandTrust for Central North Carolina	704-747-0302	www.landtrustcnc.org
Lumber River Conservancy	910-522-5751	
National Committee for the New River	336-982-6267	www.ncnr.org
North Carolina Coastal Land Trust	910-790-4524	www.coastallandtrust.org
North Carolina Rail-Trails	919-542-0022	www.ncrailtrails.org
Northeast New Hanover Conservancy	910-686-1554	
Pacolet Area Conservancy	828-859-5060	www.pacolet.org
Piedmont Land Conservancy	336-691-0088	www.piedmontland.org
Sandhills Area Land Trust	910-695-4323	www.sandhillslandtrust.org
Smith Island Land Trust	910-457-0089	www.bhic.org
<i>A subsidiary of Bald Head Island Conservancy</i>		
Southern Appalachian Highlands Conservancy	828-253-0095	www.appalachian.org
Tar River Land Conservancy	919-496-5902	www.tarriver.org
Triangle Greenways Council	919-828-8322	www.trianglegreenways.org
Triangle Land Conservancy	919-833-3662	www.triangleland.org





**Buncombe County Farmland Preservation Program
Conservation Easement Landowner Questionnaire**

1. Name: _____
2. Date: _____
3. Corporation _____, Partnership _____, LLC _____, or Individual _____
4. If owned by corporation, partnership or join entity, name the principal decision-makers:

5. Name of landowner(s) on the deed: _____
6. Landowner mailing address: _____

7. Farm address : _____

8. Phone Number: Home: _____ Cell: _____
9. Email Address: _____
10. Farm Name: _____
11. County Property ID numbers (PIN): _____
12. Deed book/page of property deed: _____
13. Property Acreage: _____
14. How long has the land been owned by your family? _____
15. Do you have a recent boundary survey for your property? Circle **YES** or **NO**
16. Are you currently in Buncombe County's **Voluntary Agricultural District**? Circle **YES** or **NO**

17. Are you currently in Buncombe County's **Enhanced Voluntary Agricultural District**? Circle **YES** or **NO**

18. The county pays for transaction costs of all our easement projects. Do you need to have additional compensation for the easement? **YES NO**

19. Do you own the mineral rights to your property? **YES NO**

20. Is there a mortgage, deed of trust or home equity loan on your property? **YES or NO**

21. Is your property in a deferred Present Use Value tax program? If yes, what type of land use is the deferred tax rate based on? (Agriculture, Horticulture, Forestry)

23. Is your property encumbered with any of the following? **Circle all that apply**

Covenants

Utility easements

Deed restrictions

Easements of sight or record

Road easements

other: _____

24. What qualities of the property are you interested in protecting?

25. What makes your farm a good property for a conservation easement?

26. Is your property next to or near any land that is already protected? Circle **Yes** or **NO**

If yes, please describe:

27. Are there any plans for adjacent lands that concern you (subdivision, development, commercial use, or fences block wildlife corridors)?
28. Describe the current uses of your property:
29. What future uses of the property do you wish to reserve if a conservation easement is done?
30. Explain any time limitations on completion of a project on your property:
31. Briefly list the number and size of existing buildings:
32. Describe future building plans on the property:
33. Please add any additional comments about your property that you wish to share with us!

Thank you for completing this application! If you have questions please call 828-250-4794

Please return by email or mail to:

Buncombe County Soil and Water Conservation District

Ariel Zijp, Farmland Preservation Manager, ariel.zijp@buncombecounty.org

Avni Naik, Farmland Preservation Coordinator, avni.naik@buncombecounty.org

46 Mount Carmel Rd Suite 101

Asheville, NC 28806