

WORKING FOREST CONSERVATION EASEMENTS IN NORTH CAROLINA



***A PROJECT OF THE NORTH CAROLINA FORESTRY
ASSOCIATION'S FOREST EDUCATION AND CONSERVATION
FOUNDATION. FUNDING FOR THIS PROJECT WAS PROVIDED
BY THE NORTH CAROLINA AGRICULTURE DEVELOPMENT
AND FARMLAND PRESERVATION TRUST FUND***

Forest Education and Conservation Foundation

The Foundation was founded in 2003 by the North Carolina Forestry Association as a 501[©] 3 nonprofit organization to promote forest resource education and conservation in North Carolina. The Foundation was established to carry on important education and conservation initiatives of the NCFA.

North Carolina Agriculture Development and Farmland Preservation Fund

In September 2005, the General Assembly passed House Bill 607 establishing the NC Agriculture Development and Farmland Preservation Trust Fund. The legislation also established a 19-member Trust Fund Advisory Committee to advise the Commissioner of Agriculture on the prioritization and allocation of funds, the development of criteria for awarding funds, program planning, and other areas for the growth and development of family farms in North Carolina.

How can the funds be used?

- Fund public and private enterprise programs that will promote profitable and sustainable farms by assisting farmers in developing and implementing plans for the production of food, fiber and value-added products, agritourism activities, marketing and sales of agricultural products produced on the farm, and other agriculture-related business activities.
- Fund farmland conservation agreements targeted at the active production of food, fiber and other agricultural products.
- Support the purchase of agricultural conservation easements, including transaction costs.

The funding for this document was provided by the North Carolina Agriculture Development and Farmland Preservation Fund through a grant to the Forest Education and Conservation Foundation.

Contributors to the Project

Conservation Trust for North Carolina, Forest Education and Conservation Foundation, NC Agriculture Development and Farmland Preservation Trust Fund, NC DENR - Office of Conservation & Community Affairs, NC DENR - Division of Forest Resources, NC Division of the Society of American Foresters, NC Farm Bureau Federation, NC Forestry Association, NC Cooperative Extension Service, NC Tree Farm Program, ATFS, NC Association of Consulting Foresters, NC Woodlands, Southern Appalachian Multiple-Use Council, and the Triangle Land Conservancy.

DVD PRODUCTION - An informative DVD titled “**What is a Working Forest Conservation Easement**” is available at no charge. In the DVD, North Carolina Forestry Association Executive Vice-President Bob Slocum assists Parker Lumpkin, a North Carolina landowner, who has never seriously considered an easement on his property to explore working forest conservation easements. To answer Lumpkin’s questions, Slocum conducts a series of interviews including a land trust executive, an experienced land-use attorney, and a landowner with a working forest conservation easement in place. The DVD length is approximately 30 minutes.”

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Active forest management not only results in healthy, productive forests, but it also creates many benefits for wildlife.

PURPOSE

This publication strives to provide basic information on voluntary working forest conservation easements (WFCE) for forest landowners in North Carolina who may be interested in actively managing their forests for wildlife, timber and other forest products within the parameters of a conservation easement. It includes definitions, pros and cons of conservation easements, easement options, financial considerations, and easement holder options in North Carolina.

Numerous federal reports show that the landscape is changing dramatically in North Carolina. Forestland is being converted to accommodate our growing urban centers. In addition, even more family forests are being divided into smaller parcels as children inherit land from their parents.

Landowners seeking ways to conserve their family forests in the face of these economic pressures should have a forest management plan for their forest and a succession strategy to ensure its future.

THE CONCEPT OF CONSERVATION EASEMENTS

A conservation easement is a voluntary legal agreement between a landowner (grantor) and a non-profit land trust, conservation organization or governmental entity (grantee) that either temporarily or permanently limits the uses of the land into the future in order to protect specified conservation values throughout the easement term. Similar to a forest management plan, easement agreements are unique to each property. In most cases, easements are drafted to conserve the property in its current state and thus will frequently limit or prohibit the amount of development and related activities that can take place on the land in the future.

In tax terms, land that is not enrolled in present-use value tax program is taxed at its "highest and best use"

by the county. In most cases, the more developed the county is where the land is located, the larger the tax difference is between the "highest and best use" and the "current use" which may be agriculture or forestry. All forest landowners who actively manage more than 20 acres of timber should consider enrolling in the present-use tax program.

The development value of a property is typically limited or extinguished by a conservation easement. Consequently, the market value of the property in terms of resale on the open market may be reduced compared to similar property in the same area without an easement agreement. In rural areas, there might not be much of a difference. Again, the differential in the market value of the land is driven by the growth and development already underway in the county.

In addition to the conservation of open space values that provide community benefits such as wildlife habitat, water quality, ecological diversity, and aesthetic beauty, easements can still produce economic benefits through continued production of timber and related products such as pine straw.

The conservation easement document is recorded in the Register of Deeds office. It runs with the land, meaning current and future owners are bound to the easement's terms and conditions.



Landowner Guy Troy poses in front of his Piedmont Land Conservancy sign on his property. Troy donated his working forest easement.

By donating a conservation easement, a landowner can earn potentially significant tax benefits by agreeing to limit certain defined uses of the property. If the land is part of a documented partnership, the tax benefits may be shared among all partners.

A permanent conservation easement donation that meets federal tax code requirements can qualify as a tax-deductible charitable donation. This can result in significant reductions in income taxes for the donor over a limited period of time. In North Carolina, landowners can earn a tax credit equal to 25% of the fair market value of the donated easement.

A landowner may have the opportunity to sell a conservation easement to an easement holder if the land is deemed to have important conservation values to the easement holder. This may provide immediate income to the landowner.

In some cases, the landowner and easement holder might combine a purchase with a donation, providing the landowner with some income as well as some tax benefits. This is referred to as a "bargain sale."

In areas with rapidly increasing property values due to urban development, a landowner who secures a conservation easement can potentially reduce the estate taxes paid by heirs since the land can no longer be valued by the county at its "highest and best use".



This house dates back to the original settlement of the Perry Family Tree Farm in the 1700's. It is now preserved as a historical site.



Control burning is a great forest management tool, especially with young Longleaf Pine forests.

TYPES OF EASEMENTS

The Internal Revenue Service defines easements with tax code section 170 (h): For a conservation easement to qualify as a charitable contribution for federal tax purposes, it must be permanent, have a qualified easement holder (non-profit organization or public agency) and meet at least one of these four conservation purposes:

- Protection of relatively natural habitats of fish, wildlife, or plants.
- Preservation of open space including working lands.
- Preservation of land for public outdoor recreation or education.
- Preservation of historically important land or buildings.

EASEMENT COMPENSATION OPTIONS

Landowners (grantors) have many ways to receive compensation for a conservation easement on their property. All options are based on a qualified appraisal of the value of the easement based on the rights that have been forfeited by the landowner (grantor). Some options include:

- Sale of full, fair market value of the agreement as determined by an appraiser.
- Bargain sale for less than the fair market value where the difference between sale price and fair market value is considered a charitable donation.
- Donation of entire value of the easement for state and federal tax benefits.
- Donation with lifetime income.
- Bequest of easement at the time of death of landowner (grantor).

A landowner (grantor) can only apply for tax incentives based on the donated value of an easement. It is the responsibility of the landowner to use a qualified independent appraiser to determine the value of the conservation easement. Qualification for tax benefits is ultimately determined by the state and federal reviewers.

WORKING FOREST EASEMENTS AND WHY THEY ARE UNIQUE

All forests provide clean air and water, aesthetics and wildlife habitat, but a working forest is actively managed to produce timber and a myriad of other environmental benefits as defined in a professionally prepared forest management plan.

The working forest conservation easement (WFCE) allows landowners to enter into a conservation easement with an easement holder that restricts development rights, but still allows the landowners to actively manage their forests for timber production. All timber management and harvests are conducted in accordance with the agreed upon forestry objectives of the landowner and the easement holder. The appraised value of the easement can provide economic benefits or savings to the landowner based on the factors discussed earlier such as location and conservation values.

The WFCE allows landowners to continue to derive economic value from their forests while promoting other conservation values through active forest management and the harvesting of trees and other forest products.



A mixed hardwood stand forms the background of this horse pasture. This forest has been actively managed for sixty years.



As most forest landowners know, natural disasters such as hurricanes can destroy years of forestry work. This is a Longleaf stand hit by a hurricane.

Landowners who already have a forest management plan may have a relatively easy time establishing a WFCE because much of their forestry objectives are spelled out in an existing plan.

It is worth noting that landowners and easement holders need to be prepared to update the forest management plan routinely to react to changing markets and/or natural disasters such as hurricanes.

In the end, the typical WFCE provides landowners with an avenue to achieve a forestry legacy by promoting healthy, productive forests that provide so many environmental and economic benefits.

CHOOSING TO RETAIN FOREST MANAGEMENT RIGHTS

Forests are dynamic and they will change regardless of what you do or don't do. They will be managed, either by you or nature. Unfortunately, forest history and the impacts of human populations on forest ecosystems have demonstrated that what nature will provide is not always what most landowners envision.

Landowners who restrict timber harvesting and other forest management techniques in conservation easements sometimes do so to protect sensitive or unique habitats, or maintain a certain forest stage (for example - old growth). Over time these habitats change through the process of natural succession and often require forest harvesting to maintain or enhance them. Also, natural disturbances such as windstorms, tornadoes, insects and disease are to be expected and forest management is needed. With our global economy and more of our population living in

and around forests, the introduction of exotic insects and diseases are commonplace. Foresters must have the tools to deal with these foreseen and unforeseen problems.

Forest landowners who consider giving up the right to harvest forest products as part of a conservation easement should carefully consider the future implications of that decision. The inability to harvest timber may forever limit the ability of the land to support itself economically or the ability of future owners to improve the forest for other values. While the present generation may be able to handle this financial burden, future generations may not.

Your property is unique and so are your objectives for managing it. Once you have identified those property values you want to preserve and enhance, you should seek professional help in developing a long-term management strategy to fit your objectives. Having developed a vision and strategy for your property will be a great asset when crafting a conservation easement that is most appropriate for your specific circumstances.



Timber harvests provide financial return to forest landowners while promoting landowners goals for their property.

PROS AND CONS OF CONSERVATION EASEMENTS

Potential positives of conservation easements include:

- Leaving the property in the ownership of the private landowner, who may continue to occupy, sell it or convey the property to heirs.
- Significantly lowering estate taxes and providing income and property tax benefits.
- Flexibility can be incorporated to meet the particular needs of landowners while protecting the property's resources.
- Assurance that the land will be conserved even when the land changes hands.
- Providing private landowners with a means to control the future use of their own private lands - usually independent of government agencies and the local planning and zoning process.
- Providing a legacy of forest stewardship on private land.

Potential negatives of conservation easements include:

- Management of the land may be subject to approval of the grantee (land trust, conservation organization, government agency) that holds the easement.
- While long-term financial benefits may be realized, initial costs and ongoing expenses can be significant.
- Uncertainty of the impact of your decisions on future owners and opportunities.
- Possible reduction of land value and re-sale potential.
- Risk that the easement holder may not be able to steward and enforce the easement in perpetuity.



Landowners Hayes and Doris Jean Harbour have established a legacy of forest stewardship through their harvesting and planting of trees over the years. The Harbours have established acres of Longleaf pine on retired farmland and harvested acres.

RECOMMENDATIONS WHEN CONSIDERING A CONSERVATION EASEMENT

Landowners should consider the following:

- If a landowner plans to convey the land to heirs, it is strongly suggested that the heirs be involved in decisions concerning easements.
- Find other private landowners who have easements and discuss their experience with easement issues.
- Obtain counsel from qualified professionals, such as an attorney and an accountant who are familiar with the tax provisions associated with conservation easements.
- Consult with or hire an appraiser so you have a realistic estimation of the value of the easement.

Take it upon yourself to learn about conservation easements and potential easement holders so that you can be informed about entering into an agreement like a conservation easement.



This Loblolly pine stand has undergone two thinnings, creating more space between the trees to grow and provide opportunities for wildlife.



The Jett family actively manages its family forest in honor of their father, John Jett. The property is home to walking trails and wildlife.

FREQUENTLY ASKED QUESTIONS ABOUT CONSERVATION EASEMENTS

What property rights do I have to give up with a conservation easement on my property?

The decision to enter into a conservation easement is purely voluntary but there are certain rights that must be given up in order to qualify under the state and federal laws.

Specific property rights you surrender in a conservation easement will be determined by you as the landowner in agreement with the holder of the easement which can be a land trust, conservation organization or public agency. Typically, conservation easements extinguish or limit development and subdivision rights.

Does all my property have to be included in the easement?

No. It is up to you and the holder of the easement to identify the exact boundaries of the easement area. You may exclude existing homes or contiguous land you own and wish to continue to use unrestricted. You may, for example, wish to set aside land for building homes for your heirs.

Does an easement give the public the right to use my property?

No. Not unless you choose to allow public access.

Who will hold the easement and administer the terms?

The easement holder is chosen by the landowner. There are many choices for landowners that may include national, regional or local land trusts, and conservation organizations designated as qualified easement holders under IRS code 170(h). Federal, state and local government agencies may also negotiate and hold conservation easements.

It is very important for landowners to carefully choose the easement holder who will administer the easement. Not only should the easement holder share the legacy vision of the landowner, they must also have the financial means and security to continue into the future.

Are all conservation easements permanent?

No. Short term easements (5-30 years) may be available for landowners wishing to restrict certain activities on their properties for a limited time period. Some easement holders may be willing to purchase a term easement on lands of particular value.

However, the federal government and state of North Carolina only recognize permanent easements as qualifying for charitable contributions and associated tax benefits.

How are conservation easements appraised?

A “before and after” valuation method is preferred by the IRS and the state of North Carolina. The “before and after” method is used to determine the degree to which an easement changes a property’s fair market value.

The fair market value of the property before the easement is estimated at its “highest and best use”. The appraiser then evaluates the draft easement and estimates the fair market value of the property with the easement in place. The difference between the before and after fair market values is the estimated value of the easement.

By North Carolina law, real estate appraisers must be licensed by the North Carolina Appraisal Board. In a working forest conservation easement scenario, it would be wise to select an appraiser who not only has experience with conservation easements, but also has the resources to properly evaluate timber and non-timber assets on your property.

What are the costs I need to consider when contemplating a conservation easement on my property?

Here are some of the costs you should think about prior to pursuing a conservation easement on your property:

- Appraisal costs
- Surveying costs
- Legal consultation
- Financial consultation
- Site assessment for environmental hazards
- Forest stewardship/management plan
- Establishing an administrative fund with grantee
- Preparation of a baseline documentation report
- Closing costs – similar to those of any real estate transaction

Sometimes there are grant monies available to help offset these up-front costs of conservation easements for landowners (grantors) and the easement holders (grantees). A number of criteria may be evaluated by the easement holder to determine eligibility for funding and amount of funding offered.

For example, the more at risk a property is for development, the more likely it may be to receive grant money to help offset the costs of a conservation easement. This is especially true if the property has some significant conservation value.



This Green Ash stand is part of a pilot project of the North Carolina Division of Forest Resources. The trees were planted in a low area on the Tree Farm of Bob and Jean Cooper, who became North Carolina’s first National Tree Farmers of the Year in 2008.

Also, there are some short-term conservation easements, such as the federal Conservation Reserve Enhancement Program, where federal and state monies may offset some out-of-pocket costs to the landowner.

Where can I get objective professional advice on working forest conservation easements?

The interest in using working forest conservation easements as a strategy to conserve family forests and natural resources continues to grow. Many organizations, universities and government agencies offer workshops for landowners on issues surrounding these unique easements.

It is important to make sure you are dealing with experienced professionals, especially attorneys, accountants and foresters that you trust when considering a working forest conservation easement for your land.

A professional forester may be a good place to start seeking guidance on where to go for advice on legal and financial matters relating to these working forest conservation easements.

National, state and local lands trusts and North Carolina Soil & Water Conservation Districts in your area also can be helpful in steering you toward experienced professionals in the legal, accounting and forestry fields.

Many state agencies that regularly work with landowners on natural resource issues, like the North Carolina Division of Forest Resources (NCDFR), can offer guidance through their local offices. Look in your phone directory under North Carolina State Government – Forest Resources for phone numbers of local NCDFR offices. You may also try your local soil and water conservation district usually listed under Soil and Water Conservation District Office. NC Cooperative Extension also has employees who can give you direction on where to go for objective expertise on WFCEs.

Will an easement on my property affect my forestry present-use-value tax status?

County tax offices handle present-use-value qualification in different ways. You should check with your county tax office to receive an opinion on this question. Typically:

- If your property currently qualifies for forestry present-use-value, a WFCE, with accompanying

forest management/stewardship plan, will not change this taxation status provided the management plan originally used to qualify has not been dramatically altered. In fact, it may help to solidify your property's tax status into the future.

- If your property is not currently taxed by the county based on forestry present-use value, a WFCE with accompanying forest/stewardship management plan, may serve to help you qualify for reduced taxation into the future.
- A conservation easement that restricts active forest management on your land may jeopardize or eliminate qualification to receive forestry present-use-value taxation status.



The forest products industry is North Carolina's top manufacturing industry and provides the major market for forest landowners across the state.

IS A WORKING FOREST CONSERVATION EASEMENT FOR ME?

Landowners must evaluate their stewardship goals for their land before embarking on any long-term strategy. A working forest conservation easement is only one strategy you might choose to conserve your forestland and only you can make that decision.

If you decide to pursue a working forest conservation easement, it should be written to address your management goals with the assistance of trusted professionals in the forestry and legal fields. Take the time to detail the terms of the agreement with the easement holder. Careful and dutiful deliberation between you, your forestry advisor, legal and accounting representation and an easement holder will take considerable time and effort so be prepared to be patient.

QUALIFIED PROFESSIONALS SHOULD BE CONSULTED BEFORE YOU SIGN UP FOR AN EASEMENT

This publication is for educational purposes and general guidance to private landowners in North Carolina regarding WFCEs. It is not a substitute for legal, financial or land management advice. Qualified professionals should be consulted on all aspects of negotiating, developing and writing conservation easements for your property. If you want to pursue a more in-depth investigation, we have assembled more detailed information on WFCEs and you can view this information online at www.ncforestry.org or contact the Forest Education and Conservation Foundation to receive a free DVD (as described in the introduction) and/or publication (800-231-7723).

REFERENCES

The Landowner's Guide to Conservation Easements - Updated Edition 2001. Steven Bick and Harry L. Haney, Jr. ISBN 0-7575

Voluntary Conservation Agreements: An Introduction for North Carolina Land Owners - 3rd Edition Brochure Conservation Trust for North Carolina with assistance from the North Carolina Coastal Land Trust and National Fish and Wildlife Foundation (2010). www.ctnc.org

Working Forest Conservation Easements: A Primer for Forest Landowners: Maryland Cooperative Extension Information Sheet - 2002. www.naturalresources.umd.edu/Publications/PDFs/Information%20Sheets/ISConservation.pdf

Working Lands Preservation Resource Manual for North Carolina Soil and Water Conservation Districts - North Carolina Association of Soil and Water Conservation Districts - 2009. Contact Jerry Dorsett or Michele Lovejoy at (336) 771-4945.

CONSERVATION EASEMENT INFORMATION WEB SITES

Conservation Trust for North Carolina

<http://www.ctnc.org>

NC Cooperative Extension

<http://www.bae.ncsu.edu/programs/extension/wqg/frenchbroad/pubs/conservation/factsheet2.html>

NC Division of Forest Resources

http://www.dfr.state.nc.us/Managing_your_forest/managing_your_forest.htm

http://www.dfr.state.nc.us/fsandfl/what_is_forest_legacy.htm

NC Farm Transition Network

<http://www.ncftn.org/planning/planning-resource-library/landconservation>

NC State Economist

http://www.ag-econ.ncsu.edu/VIRTUAL_LIBRARY/ECONOMIST/mayjune03.PDF

