

Funding for Conservation Easements

May 4–5th, 2010
NC Coastal Land Trust

Conservation Easement Donations – What are the Expenses for Grantee?

- ▶ **Survey or legal description** – can be very expensive! Make sure boundaries are clearly marked on the ground. Ask Grantor to provide?
- ▶ **Title Examination** and insurance (for value of the easement)
- ▶ **BDR** (internal or contracted out)
- ▶ **Legal costs** (if you hire attorney)
- ▶ **Closing Costs**
 - Recordation fees (Easement and survey)
 - Copies of documents

MONITORING THE EASEMENT IN PERPETUITY!



NCCLT staff photo

Conservation Easement Donations – What Are The Costs for the Grantor?

- ▶ **Survey** and/or legal description (if Grantee won't cover)
- ▶ **Appraisal**
- ▶ **Attorney**
- ▶ **Accountant**
- ▶ **Stewardship**
Endowment



Photo courtesy of The Nature Conservancy

How to Cover Transaction Expenses for Donated Easements?

- ▶ **N.C. Clean Water Management Trust Fund** mini-grants for donated easements (up to \$25,000)
- ▶ **N.C. Agricultural Development & Farmland Preservation Trust Fund** (up to \$20,000)
- ▶ **Operational funds**
- ▶ Other **private** or **public grants**



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Purchased Farmland Easements– Public Funding Sources

- ▶ **N.C. Agricultural Development & Farmland Preservation Trust Fund.** Dec. cycle
 - Match of 30% required
- ▶ **NRCS Farm and Ranch Lands Protection Program**
 - Match of 50% non-federal funds (25% can be private bargain sale contribution).
- ▶ **N.C. Clean Water Management Trust Fund**
- ▶ **Attorney General's Environmental Enhancement Grant Program**

Purchased Farmland Easements– Private Funding Sources

- ▶ **Tobacco Trust Fund**
(www.tobaccotrustedfund.org)
- ▶ **Golden Leaf Foundation** (www.goldenleaf.org)
- ▶ **WalMart Foundation**
www.walmartstores.com
- ▶ **Private Donors**



Other Conservation Options

- ▶ Wetland Reserve Program
- ▶ Conservation Reserve Program
- ▶ Environmental Quality Incentives Program
- ▶ See handouts



Allen Farm CRP Easement

Donated Easements are Easiest, but Creativity Works!

- ▶ **NE Cape Fear/McKeithan**, Pender Co. – CWMTF funds and donation– cash and tax break
- ▶ **Pleasant Oaks Plantation**, Brunswick Co.– staged donations to maximize tax savings
- ▶ **Town Creek/Henry**, Brunswick Co. – Significant bargain sale
- ▶ **Waccamaw River/Carroll**– CWMTF funds over bottomlands only, rest in forestry



Jackson Farm– Sampson County

- ▶ **NC Agricultural Development & Farmland Preservation Trust Fund grant** (transaction expenses)– Dec. 2009
 - Survey
 - BDR
 - Legal and Closing
- ▶ **NC AG EEG grant** (acquisition expenses)
- ▶ **CTNC mini-grant**
 - Appraisal
 - Some stewardship

Tom and Jan Jackson, NCCLT staff photo



Guthrie Farm – Carteret County

- ▶ **NC Agricultural Development & Farmland Preservation Trust Fund grant** (acquisition and transaction expenses)
- ▶ **NRCS Farm and Ranch Lands Protection Program** (acquisition expenses)
- ▶ **Dept. of Navy–REPI Funds**
- ▶ **Bargain sale**

Photo courtesy of C. Lombardo



Jubilee Farm –Chowan County

- ▶ **Easement Donation** (Dec. 2001)
- ▶ Owners willing to pay for **transaction expenses** (legal description, BDR)
- ▶ Owners paid for **easement drafting**
- ▶ Owners paid for **stewardship endowment**
- ▶ Closed in **one month!**

*Photo courtesy of
John Derrick*



Rayburn Farm – Perquimans County

- ▶ **Phase I – N.C. Agricultural Development & Farmland Preservation Trust Fund** (easement acquisition over 130 acres)
 - Bargain sale contribution
 - Transaction costs mostly covered
 - Took 2 years to complete from time of grant request (Dec. 2000, closed in Dec. 2002).

NCCLT Staff Photo



Rayburn Farm –Perquimans County

▶ Phase II – Easement Donation over 42.99 acres (Nov. 2007)

- More flexible easement
- Took less time to complete
- WalMart Foundation grant helped with transactional expenses

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American Farmland Trust

▶ A National View of Agricultural Easement Programs 2003 (www.farmland.org)

- Looked at 46 agricultural easement programs in 15 states (both county, state and local non-profit programs).
- Examined funding sources
 - State funding programs
 - Land transfer tax revenues
 - Innovative funding sources – impervious surface tax, luxury tax



American Farmland Trust

- ▶ **A National View of Agricultural Easement Programs: Measuring Success**
- ▶ **Mixed results:** Pros—impressive acreage protected, land staying in farming, Cons—may not be impacting local economies, viability of easements?

“Among all the technologies for protecting farmland. . . easements hold the most promise—considering their perpetuity, voluntary participation by landowners, and the matching of public purposes and farmer interests.”

Alvin D. Sokolow, Agricultural Issues Center, University of CA, Davis



Funding for Conservation Easements

- ▶ **Summary**
 - Easement donations easiest!
 - Need to know about tax incentives – Next topic!
 - Know the details of particular public funding programs, want to pick projects that can compete well.
 - Be creative! Think big!



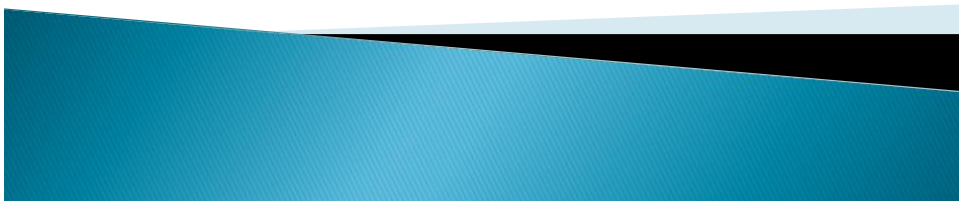
Gray Brothers and their Pasquotank County farm, NCCLT staff photo





Additional Funding Considerations and Potential Tax Benefits

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Possible Tax Incentives

- ▶ Federal income tax deduction
- ▶ Federal Estate tax reduction
- ▶ Property tax reduction

Another Added Incentive. . .

- ▶ North Carolina Conservation Tax Credit Program



Internal Revenue Service Requirements

- ▶ Federal tax laws allow the donor of an easement to claim its value as a deduction for income, gift and estate tax purposes under 26 U.S.C. 170(h) and 2055(a).



Federal Tax Incentives

- ▶ If land is a long-term capital gain property, Donor may claim a federal income tax deduction for FMV of the easement.
- ▶ Up to 30% of AGI in year donation is made
- ▶ Carry-over remaining value-5 years



Federal Tax Incentives

- ▶ Must be a qualified easement according to Section 170(h) of IRC which means it must be:
 - Must be perpetual
 - Must be given to a qualified Grantee
 - Must meet one of IRS's Conservation Purposes
 - Must have it appraised by qualified appraiser

Photo courtesy of J. Cameron



Federal Income Tax Deduction

- ▶ Example:
 - Easement valued at \$100,000
 - Owner has AGI of \$60,000
 - May deduct 30% of \$60,000 or 18,000 in each of years 1–5, and the remaining \$10,000 in year six.
 - If land is ordinary income property (short term capital gain property), contribution is limited to the basis of the property with no deduction for unrealized appreciation.



Conservation “Blue Light” Special

- ▶ Congress **expanded federal income tax incentives** for qualifying conservation easement donations in 2006.
- ▶ Raises the deduction a donor can take from 30% to 50% of AGI.
- ▶ Extends the carry-forward period from 5 to 15 years
- ▶ Act Now! Expired Dec. 31, 2009, but will likely be extended for another year.



Expanded Federal Tax Incentives

▶ Comparison Example

Old Rules

AGI- \$50,000

\$1 million CE value

Can deduct \$15,000/year

Total deduction over 6 years
is \$90,000

New Rules

\$25,000/year

Total=\$400,000
over 16 years.



Expanded Federal Tax Incentives

- ▶ **Qualified farmer or rancher**, defined as a landowner who receives more than 50% of his or her gross income from the business of farming
- ▶ Can deduct up to 100% of their AGI.
- ▶ Previous example – \$50,000 AGI, \$1 million dollar easement, total deduction is \$800,000
- ▶ **For more details, see www.lta.org/policy/tax-policy.**



Conservation Easements and Estate Taxes

- ▶ Federal estate (death) taxes and state estate taxes frequently prevent land with substantial value from being passed intact to heirs.
- ▶ An easement may significantly reduce the Market Value of the property going into an estate, thus reducing overall estate taxes.
- ▶ Easement may be granted by will, the donor's estate may claim a charitable deduction, thus reducing the estate tax.



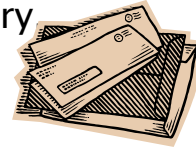
2010 Estate Taxes— Anyone's Guess?

- ▶ Estate Tax was repealed at the end of 2009
- ▶ Congress did not plug Estate Tax loophole for 2010— good news or unintended consequences for heirs?
- ▶ For 2011, if Congress does not act, estate taxes will return to 2001 levels (up to only \$1 million exempt, 55% tax on rest).
- ▶ Most estate planners expect Congress to restore the taxes retroactively in 2010, and to put back in place the system that applied in 2009: a \$3.5 million exemption for estate tax, with a 45 percent rate for remainder.



Conservation Easements and Property Tax

- ▶ Conservation Easements do not remove land from the property tax rolls.
- ▶ NC law requires that land subject to CE's be assessed at its actual value.
- ▶ However, if property is in agricultural or forestry use value, likely not going to reduce real property taxes if easement allows the continuation of farming and forestry



N.C. Conservation Tax Credit Program

- ▶ N.C. General Statutes §105-130.34 et seq. and §105-151.12.
- ▶ Allows landowners to receive a tax credit for gifts of conservation easements.
- ▶ Dollar for Dollar subtraction of income taxes owed up to 25% of easement value.
- ▶ Caps- \$250,000 for individuals; \$500,000 for corporations.
- ▶ Must have public benefit, CE must qualify.
- ▶ Contact Scott Pohlman at NCDENR at:

www.onencnaturally.org

N.C. Conservation Tax Credit Program—continued

- ▶ **Donations must serve a public benefit that is useful for:**
- ▶ * Public beach access or use,
- ▶ * Public access to public waters or trails,
- ▶ * Fish and wildlife conservation,
- ▶ * Forestland or farmland conservation,
- ▶ * Watershed protection,
- ▶ * Conservation of natural areas as that term is defined in G.S. 113A-164.3(3),
- ▶ * Conservation of natural or scenic river areas as those terms are used in G.S. 113A-34,
- ▶ * Conservation of predominantly natural parkland, or
- ▶ * Historic landscape conservation

Form 8283

- ▶ IRS Form for Non-Cash Charitable Contributions
- ▶ Must be completed by Grantor and signed by Grantee
- ▶ Declaration and signature of appraiser
- ▶ Must state value of CE (if value is over \$500,000 need to include copy of appraisal)



Recommended Practices/Policies

- ▶ Internal Policy on review of 8283 form and Grantor's appraisal and value claim.
- ▶ Pre-Easement: Send landowner a letter outlining responsibilities – no legal or tax representation!
- ▶ Post-Easement: Send landowner an acknowledgement letter once conservation easement has been recorded.
- ▶ Remind landowner of what you need to sign their 8283 form.



Simon Rich, Photo by John Derrick



James Carroll, NCCLT staff photo

Stan and Ann Riggs, NCCLT staff photo

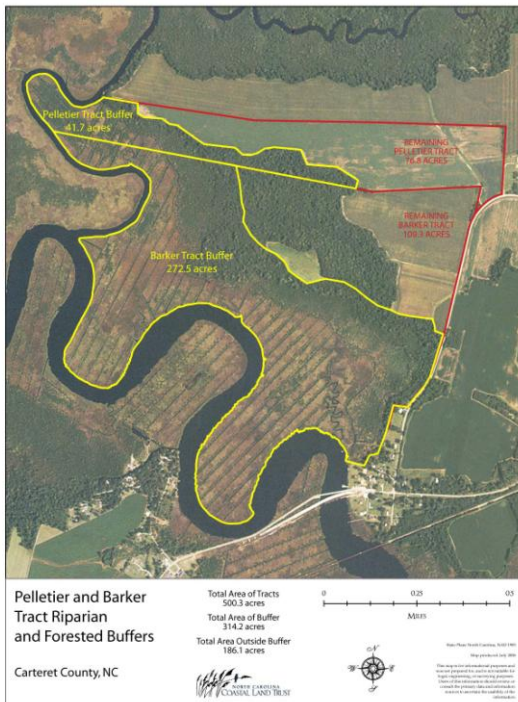


Bernest Hewett, NCCLT staff photo





Five Eagle Partners Tract
Pender County
1.5 miles on NE Cape Fear
1,200 acres
Owners interested in conserving the property.



Pelletier Farm, Carteret County
118 acres
Hunter's Creek
Owner interested in cash and conservation