

DEVELOPING SUCCESSFUL CONSERVATION EASEMENTS

HELPING LANDOWNERS TAKE A WALK ON THE WILD SIDE

Working Lands Conservation Easement Workshop
May 4 and 5, 2010

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North Carolina Coastal Land Trust
112 W. Eden St.
Edenton, N. C.
www.coastallandtrust.org

WORKING WITH LANDOWNERS TO PRESERVE FARM AND TIMBER LAND

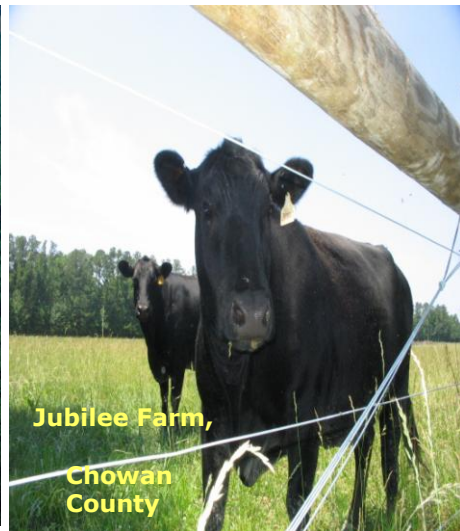
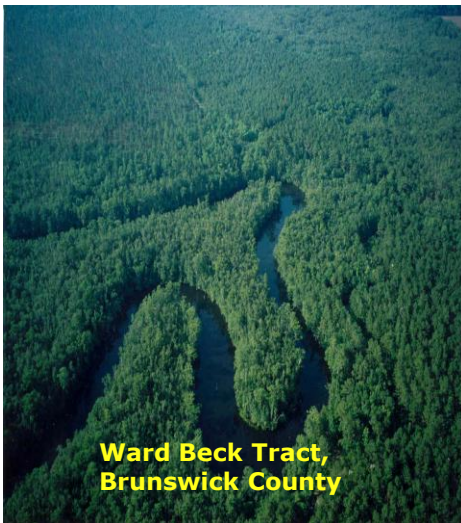


AGRICULTURAL CONSERVATION EASEMENTS

1. Just the Facts
(The Basics)
2. Hey, I Have Some Swampland to Sell
You!
(Project Criteria)
3. The Nitty Gritty
(What's Needed from the Landowner)
4. How Long Will All of This Take and Who
Pays for It? (Conservation Easement
Timeline & Steps in the Process)

1. THE FACTS: “MILLIONS OF ACRES CONSERVED BY VOLUNTARY ACTION”

www.llta.org 3/12/03



North Carolina's Coastal Areas



*Sample's Farm
Pasquotank County*

-Since 2002, N. C. has lost more than 6,000 farms and 600,000 acres of farmland

N. C. Agricultural Development & Farmland Preservation Trust Fund

CONSERVATION ALTERNATIVES

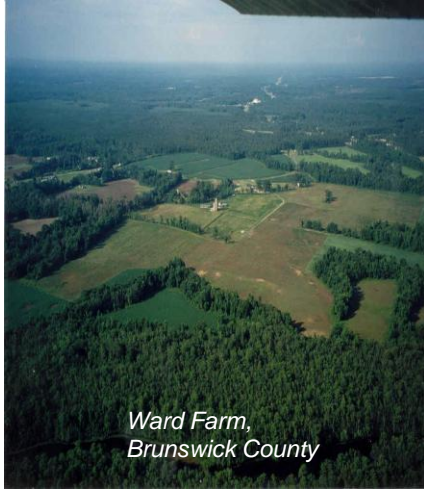
- ▣ **North Carolina leads the nation in farm loss**

N. C. Agricultural Development & Farmland Preservation Trust Fund

*Foscue Plantation,
Jones County
NCCLT Agricultural Conservation, Jones County
NCCLT Agricultural Conservation Easement*



GROWING SUPPORT FOR LAND CONSERVATION

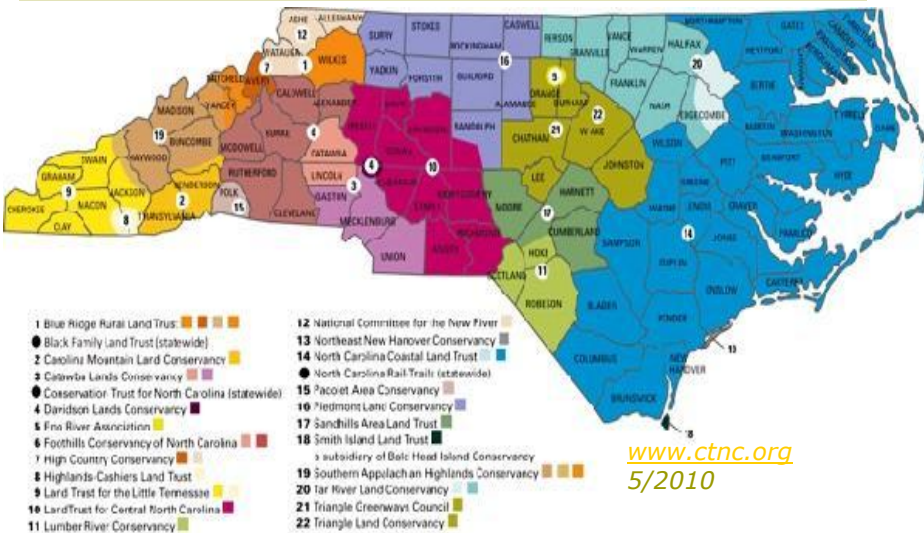


Ward Farm,
Brunswick County



Tar River,
Pitt County

N. C. Land Trust Geographic Coverage

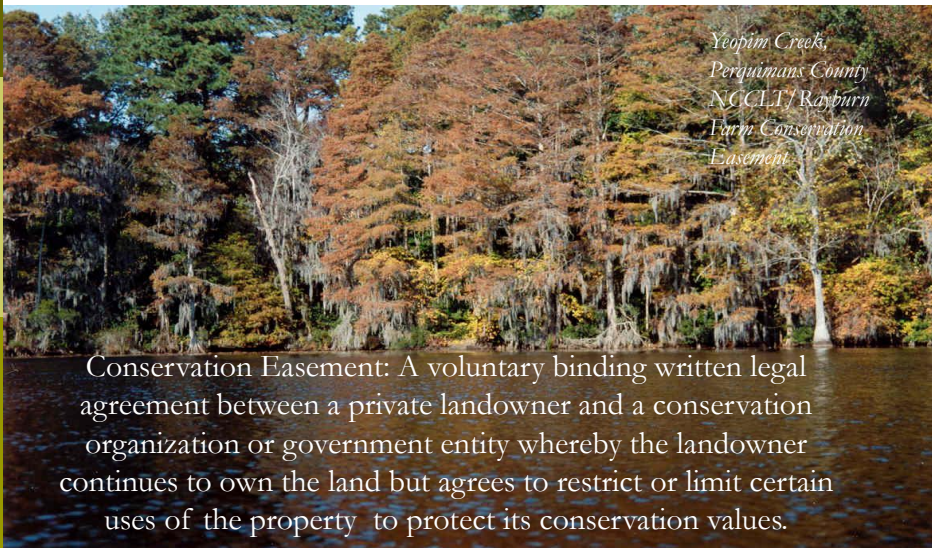


LEGAL TERMINOLOGY

- Fee, Fee Simple or Fee Title
- Deed
- Restrictive Covenants
- Run with the Land
- Easement
- Conservation Easement

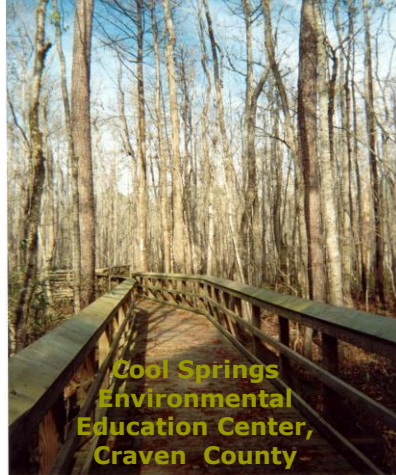


WHAT IS A CONSERVATION EASEMENT?



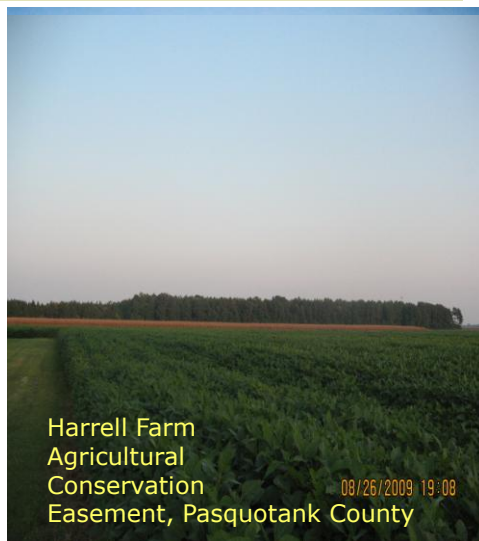
HOW LANDS ARE PLACED IN CONSERVATION

- 1- Donation
- 2- Devise in Will
- 3- Purchase
 - a- at fair market value
 - b- bargain sale (less than fair market value)
 - c- combination donation/purchase



WHO OWNS THE LAND?

- Ownership interests obtained by natural resource agency or land trusts
 - Fee title
 - Conservation easement –
 - Landowner continues to own the land
 - Land Trust owns easement and restricted rights



STATUTORY AUTHORITY

- ❑ Common Law View

- ❑ Enabling Legislation
North Carolina Example-
Historic Preservation
and Conservation
Agreements Act
N. C. G. S. Section 121-34 et.
seq.



THE ANATOMY OF AN EASEMENT I

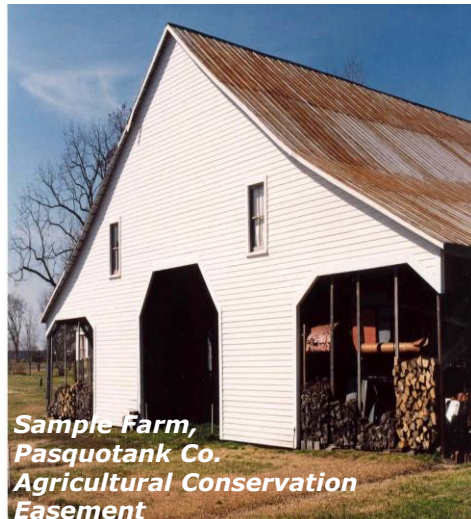
- ❑ Drafting
Considerations

- ❑ Perpetual Duration

- ❑ Parties

- ❑ Recitals/Purposes

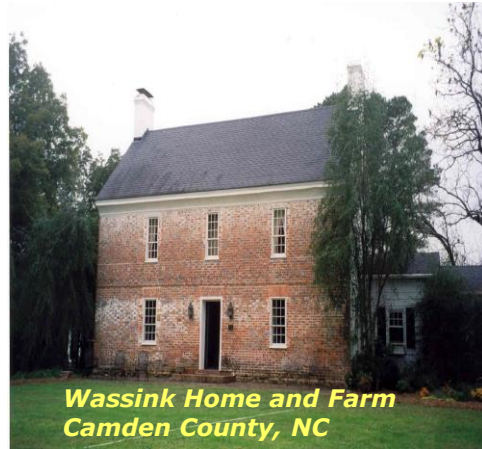
- Design is Based on
Conservation Purpose



*Sample Farm,
Pasquotank Co.
Agricultural Conservation
Easement*

THE ANATOMY OF AN EASEMENT II

- ❑ Landowner's Reserved Rights/Uses
- ❑ Restrictions on Use/Restricted Rights
- ❑ Enforcement
- ❑ Remedies



CONSERVATION EASEMENTS KEY POINTS

- ❑ Strictly voluntary
- ❑ Land remains in private ownership
- ❑ Tailored to meet the landowner's financial objectives
- ❑ Protect the land's conservation values
- ❑ Do not imply public access
- ❑ Perpetual
- ❑ Tax advantages



2. HEY, I HAVE SOME SWAMPLAND YOU MAY WANT!

What Qualifies and What Doesn't?

*Indiantown Creek Tract,
Currituck and Camden
Counties*



FOCUS AREAS

- Coastal Landscapes
 - Remnants of barrier beach systems
 - Unique wetlands
 - Longleaf pine forests
 - Significant wildlife habitats
 - Rare species habitats
 - Prime farm lands
 - Ecologically significant Natural Heritage Areas

**Cool Springs,
Craven Co.**



Rare Species Habitats

Pettiford Creek, Carteret County



Pitcher Plants
B. W. Wells Savannah,
Pender County



Red cockaded woodpecker

HISTORIC LANDSCAPES AND COMPLEMENTING HISTORIC STRUCTURES



Jubilee Farm Agricultural Conservation Easement and Façade Easement on Historic Home, Chowan County

Wassink Agricultural Conservation Easement, Camden County



RIVER CORRIDORS



FARMLAND WITH MULTIPLE CONSERVATION VALUES AND LEGACY FARMS



**Rayburn Farm, Perquimans County
(Legacy Farm, North Carolina Coastal Land
Trust Conservation Easement)**

PROS FOR THE LANDOWNER

THE PROS OF EASEMENTS:

- ❑ **Landowner retains title and right of possession**
- ❑ **Ensures conservation values of property will be protected**
- ❑ **Possible tax benefits**



CONS FOR THE LANDOWNER

- ❑ Con: perpetual term
- ❑ Con: restriction on future use
- ❑ Con: expensive, time-consuming and complex transaction
- ❑ Con: the 3 A's
 - attorney,
 - accountant, and
 - appraiser



PROS AND CONS FOR THE LAND TRUST

- ❑ Pro: generally received as donations
- ❑ Pro: management costs kept by landowner

-
- ❑ Con: perpetual obligation to monitor, steward and enforce; potential lawsuits
 - ❑ Con: subsequent owners may not be as motivated for conservation
 - ❑ Con: expensive, time-consuming and complex transaction



*Foy Creek/Foy Conservation Easement
Pender County*

The Gospel According to the IRS – 4 Conservation Purposes

- ❑ **To qualify for tax incentives easement must have**

Donation Component

+

Perpetual Term

+

RULE OF "P"



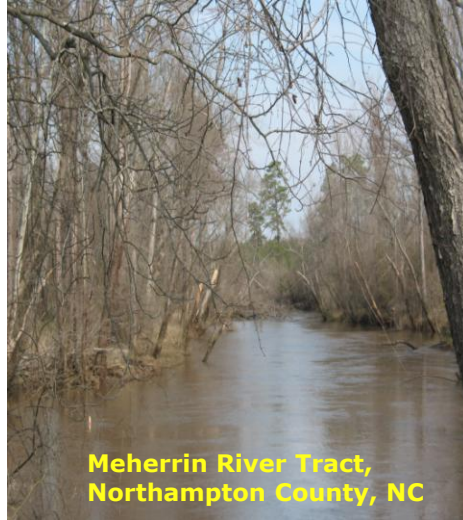
**Pasquotank River Tract,
Camden Co., purchased in
bargain-sale**

THE RULE OF “P”

-Proper Purpose

Protects land for:

- 1-public outdoor recreation;
- 2-natural habitats for fish, wildlife;
- 3-open space including working farm and forest land; or
- 4-historic lands or structures



PROPER PARTNER

IRS requires a qualified grantee

Qualified Grantee=

- ❑ Natural resource agency;
- ❑ County or local government; or
- ❑ Land trust



3. The Nitty Gritty

Who are (all of) the owners?

What degree of protection – fee or conservation easement and reserved rights?

What is the owner's motivation and timeframe?

Does the owner intend to sell, donate, bargain-sale?

Owner must consult with own accountant and attorney



4. How Long Does All of This Take and Who Pays For It?

STEPS IN THE PROCESS

- Conservation easement document
- Inventory of the property
- Title examination

-
- Survey
 - Appraisal
 - IRS Form 8283

*Photo courtesy of
Richard LeBlond*



Conservation Easements

Valuation

- ❑ Current Appraisal - necessary to establish the value of the easement for tax purposes
- ❑ Appraisers consider the nature of restrictions, character of the property, and market value of the property with and without the easement
- ❑ **Value of Easement = Difference between the for Charitable Contribution Purposes “before” and “after” values of Conservation Easement**

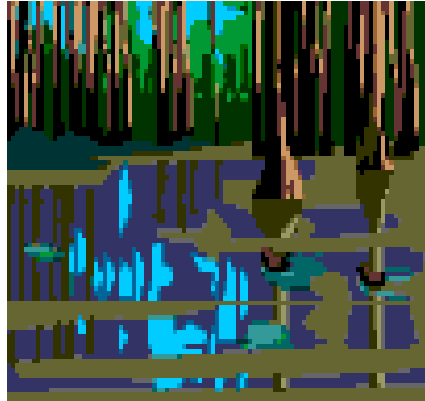
Appraisal Example- 200 Acres Waterfront



- ❑ “Before-After Test”
- ❑ “Before” value (fee title as is): \$1,000,000; highest and best use is residential development (\$5,000/acre).
- ❑ “After” value (with CE) – no residential development, only passive recreation (e.g., hunting and fishing) - \$200,000 or (\$1,000/acre).
- ❑ Easement Value = \$1,000,000-
\$200,000=\$800,000 Difference between before and after values.

Why Opt for a Conservation Easement?

- ❑ Protect identified conservation values on property
- ❑ Help landowners meet their economic and land use objectives



ONE SIZE DOES NOT FIT ALL!

**Remember –
Land is unique!**

**Conservation
Easements are as
unique as landowners
and their properties!**



Rusty Gaul, Beaufort County

Donated Conservation Easement – Jubilee Farm, Chowan County



Donated Conservation Easement– Catherine Sloan Tract

- ❑ “Forever wild” easement
- ❑ Forested buffer along South River

Sampson County



Donated Conservation Easement - Pleasant Oaks Plantation

- ▣ Donation in stages to maximize tax savings



Brunswick County

Purchased Conservation Easement - Weyerhaeuser's Cool Springs Tract



Photo courtesy of Jeff Hall

Craven County

Donated Working Farm and Forest Conservation Easement – Different Restrictions on Different Portions of the Property



Common Questions

- ❑ Can an easement be changed or terminated?
- ❑ Can an easement be condemned?
- ❑ Can an easement be placed on mortgaged property?
- ❑ How long do easements last?



Venus flytraps



NORTH CAROLINA COASTAL LAND TRUST

**Donated Conservation Easement on
Three Tracts, Reid Farm,
Pasquotank County**

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