

Fulfilling the Promise Conservation Easement Stewardship

North Carolina Coastal Land Trust

Janice L. Allen, New Bern, NC

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A Commitment in Perpetuity



*Jubilee Farms, Chowan County
Easement Donated in 2001*

Why is Stewardship So Important?

“To negotiate, sign, and record a conservation easement and then to neglect its stewardship is a little like working hard to buy a sleek sports car and then abandoning it to rust in the rain. . .Of course, you have the right to neglect your Porsche if you wish, but an easement is different because there’s a public trust involved.”



The Legal Case for Stewardship

- Legally required to uphold and defend their easements.
- Legal standing in court may be weakened if Trusts have not had an ongoing record of stewardship on a property in dispute.
- IRS requires that “the eligible donee. . .have the resources to enforce the restrictions” of the easements.

Stewardship is Key to Land Conservation



Courtesy of NC Wildlife Resources Commission and CTNC

Stewarding A Conservation Easement

Requires:

- Drafting a conservation easement
- Preparing a baseline inventory
- Knowing and posting easement boundaries
- Maintaining good relationships with landowners
- Keeping annual and precise monitoring records
- Ability to respond to violations
- Adapting to changing conditions

Conservation Easement Language Keep it Simple!



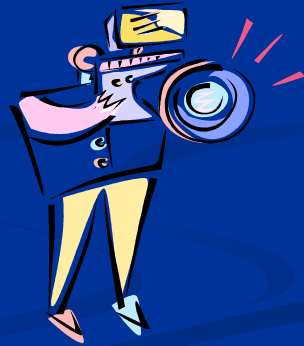
*Gaul Tract,
Beaufort County
Easement donated 2002*

Clear, Measurable, Enforceable Restrictions

- Only one single family residence may be constructed on the property vs. . . .only one single family residence of no more than 5,000 square feet of heated and unheated space can be constructed on the property.
- Subdivision of the property is not allowed vs. . . . Subdivision is not allowed except for the purposes of obtaining a loan.
- No timbering within the riparian buffer vs. . . No timbering within the 50-foot riparian buffer area as delineated on Map 2 in the BDR.

Baseline Documentation Reports Critical Information

- Photodocumentation – setting up photopoints, document human improvements
- Description/location of conservation values –floral & faunal inventories
- Maps, aerial photos highlighting special areas/buffers, restrictions, etc.
- Incorporate any Forest or Farm Management Plans as appendices.
- Signature of the landowner



Vital Evidence!



Marking Boundaries is Critical!



*Posting boundaries at Turkey Quarter
Island Preserve*



*Painted lines at the
Anderson Farm Easement*

Easement Monitoring Program



Sarah Gannon, volunteer and Jessica Blake, Director of Stewardship

The Importance of Landowner Relationships



Landowners are Long-term Partners!

Summary of Stewardship Best Practices

- Keep easement language as simple as possible.
- Need Baseline Reports with photodocumentation and maps at a minimum. (Phase I Environmental Audits are separate reports).
- Surveys need to incorporate on the ground marking.
- Annual monitoring required. Records need to be standard. Landowners must be notified of visits.
- Need to maintain good landowner relationships.

Stewardship – The Bottom Line

- **TRY TO AVOID CONFLICTS IF AT ALL POSSIBLE** through good landowner relationships
- **PREPARE NOW TO GO TO COURT TO ENFORCE THE TERMS OF AN EASEMENT** (keep thorough monitoring reports and photodocumentation records, develop a policy on how to handle a potential enforcement case).

Land Trust Alliance's Standards and Practices



www.lta.org

Stewardship Funding

Why is it Necessary?

- Legal Reasons (as mentioned earlier)
- Practical Reasons:
 - PERPETUITY!!!
 - Everything requires resources:
 - Developing the easement
 - Annual monitoring
 - Responding to grantor requests or permission requirements
 - Legal defense of the property

Stewardship Expenses

Need to consider:

- The size of the property and its remoteness
- The number of reserved rights (degree of complexity)
- The relationship with the landowner
- Access to the easement
- Ease in locating boundaries



Where's the Beef?

When do project design and easement provisions drive up the cost of management?

- Monitoring
 - Complex projects, multiple owners/parcels
 - Requiring complex ground monitoring and boundary maintenance
- Reserved Rights: many or complex
 - Frequent requests for interpretation, approval, amendments
 - Extra site visits and administrative follow-up
 - Multiple changes to maps/plans/reports ———

Stewardship Budget Plan A Land Trust's Perspective

Many variables to consider including:

- Use of volunteers, staff or contract
- Restrictions and permission requirements (the complexity of the easement restrictions)
- Overall number of easements, travel time
- Annual vs. unexpected expenses
- Fee vs. conservation easement

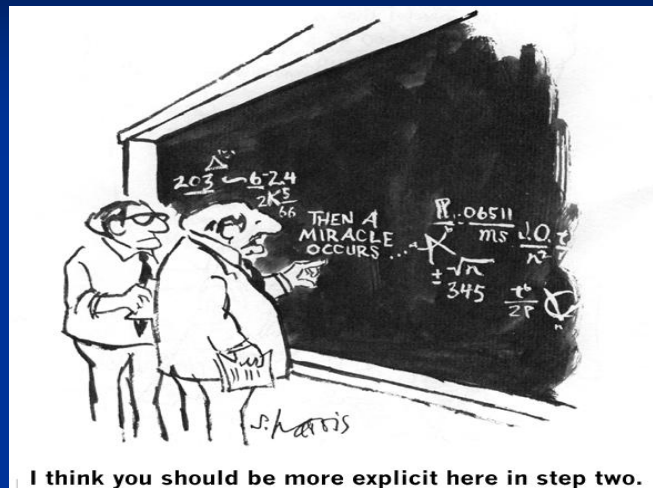
Stewardship Endowments How much? How to Calculate?

- Fixed per acre fee
- Percentages of assessed or fair market value
- Percentage of tax savings
- \$ per staff hour/easement/year
- Detailed worksheets or spreadsheets



*Green's Thoroughfare Island
Craven County
Easement Donated by Restoration
Systems, Inc. 2002*

Calculating Endowments



Keep It Simple!

North Carolina Coastal Land Trust's Stewardship Endowment Formula

- Base cost of stewardship depends on size of tract.
- For tracts less than 250 acres
 - One day of staff time @ \$400 or \$50/hour
 - Round trip travel @\$150 (from Wilmington Office)
 - Administration @ \$400
 - Pro-rated violation time \$80 (32 hours @ 5% chance in 20 years.
 - Photos, supplies @ \$50
- Total for one day = \$1,080 amortized at 5%, will need \$21,600

North Carolina Coastal Land Trust's Stewardship Endowment Formula

- May tack on additional \$\$ if there are stewardship management difficulties, i.e., for complex reserved rights or restrictions, undefined boundaries



Brown's Island, Carteret County

What???

I'm Giving You an Easement and You Want Money Too???



Addressing Stewardship Endowment

- NCCLT generally only requests 50% of total needed if it is an easement donation (\$10,800 vs. \$21,600)
- Can seek grant funds, e.g., CWMTF or private contributions.
- NCCLT budgets for some of general stewardship costs in operating budget.



Transfer Fee Language

- Requiring a fee (e.g., flat fee or a percentage of sales price) at the time the property is sold.
- Written in the Easement.
- Does not apply to spouses, family members.



NCCLT staff photo

How Are Stewardship Funds Managed?

- Endowments
- Legal Defense Fund
- Investment Policies



Stewardship Funding/Management Summary

- Good stewardship requires adequate and stable funding.
- Need to recognize the difference between annual (monitoring) and long-term (enforcement) funding needs.
- Calculations of funding amounts should take into consideration real costs.
- Policies need to be in place on how the funds are invested.

Conservation Easement Violations Results from a Study of Land Trusts LTA, 1999

- The majority of the nation's land trusts have not experienced violations.
- Only 7% of the easements held by land trusts experienced violations, and 79% of those were considered minor.
- Most common violations involved prohibited surface alterations, cutting of vegetation and construction of structures.

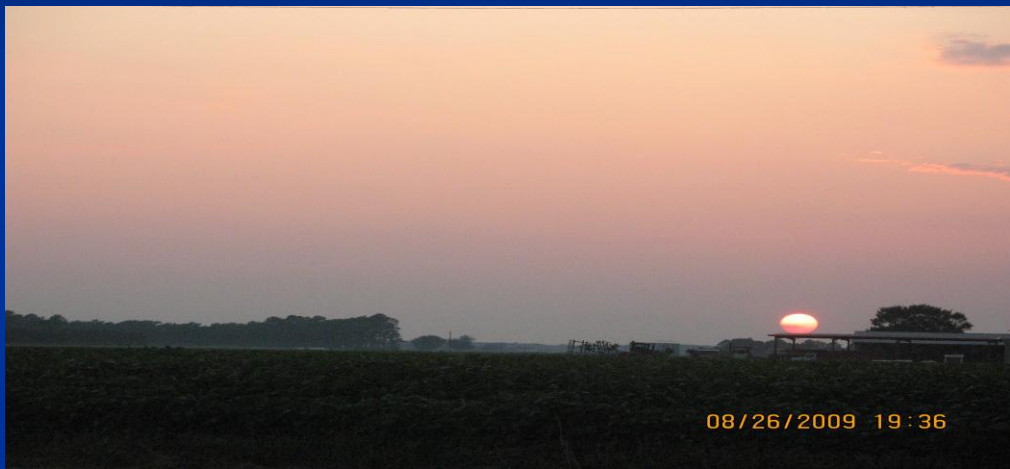
Stewardship and the Next Generation

Problems and violations are inevitable.

Prepare for the worse.



Stewardship- A Growing Challenge



Reid Farm, Easement Donated in 2009