

# WHEN THE HONEYMOON IS OVER!



## CONSERVATION EASEMENT VIOLATIONS AND ENFORCEMENT

Working Lands Conservation Easement Workshop  
May 4 and 5, 2010

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## THE “SALAD” YEARS . . .



Springer's Point Preserve,  
Ocracoke Island

-Land Trust has acquired Fee Title or Easement

-Landowner has cash from sale or tax advantages



-Landowner motivated by conservation has land conserved

## BUT, IT'S A LONG ROAD . . .

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Subsequent owners may not be as motivated by conservation!

**Reid Farm Conservation Easement  
Pasquotank County, N. C.**



## PUT IT IN WRITING – ALWAYS!

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### **ARTICLE III. ENFORCEMENT AND REMEDIES**

- A. Notification and Enforcement. To accomplish the objectives of this Conservation Easement, the parties are allowed to prevent any activity on or use of the Property that is inconsistent with the purposes of this Conservation Easement and to require the restoration of such areas or features of the Property that may be damaged by such activity or use. Upon any breach of the terms of this Conservation Easement by either party (the "Breaching Party") that comes to the attention of the other party ("Non-Breaching Party"), the Non-Breaching Party shall notify the Breaching Party in writing of such breach and whether it considers such breach to be material. The Breaching Party shall have ninety (90) days after receipt of such notice to correct the conditions constituting such breach. If a breach alleged to be a material breach by the other party remains uncured after ninety (90) days, the Non-Breaching Party may . . .

*Rayburn Agricultural  
Conservation Easement, II*

## ENFORCEMENT AND REMEDIES

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- ❑ Authorizes Action in Event of Breach
- ❑ Restoration as Remedy
- ❑ Written Notice of Breach
- ❑ Right to Cure
- ❑ Right to Inspect
- ❑ Acts Beyond the Grantor's Control
- ❑ Costs of Enforcement
- ❑ Non-Waiver



## OTHER IMPORTANT PROVISIONS

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- ❑ Hazardous Wastes
- ❑ Amendments
- ❑ Applicable Law
- ❑ Mediation



## THE GOOD ...



## WHAT THIS MEANS ...

- ❑ Coastal Land Trust's Annual Monitoring Responsibility:
  - holds 103 easements
  - has 36 preserves
  - plus monitors 17 CWMTF easements
  
- ❑ Monitors 156 easements/fee title parcels a year



# CONSERVATION EASEMENT ENFORCEMENT POLICY

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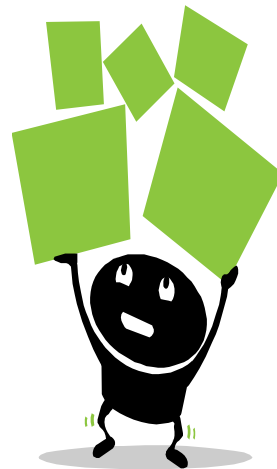
- **Purpose**
- **Background – Why Conservation Easements Must be Enforced**
- **Policy**
  - **Monitoring**
  - **Report and Document Violations**
  - **Evaluate/Develop Plan of Action**
  - **Document Compliance**
  - **Inform Board of Directors**



# GENERAL GUIDELINES

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- Maintain Conservation Purpose
- Maintain Ability to Achieve Mission and Enforce Easements
- Maintain Relationship with Owner
- Maintain Professionalism and Integrity
- Balance Harm of Violation with Cost/Benefit of Enforcement
- Litigate Only if Necessary, but . . .





## THE BAD . . .

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### TIMBER TRESPASS

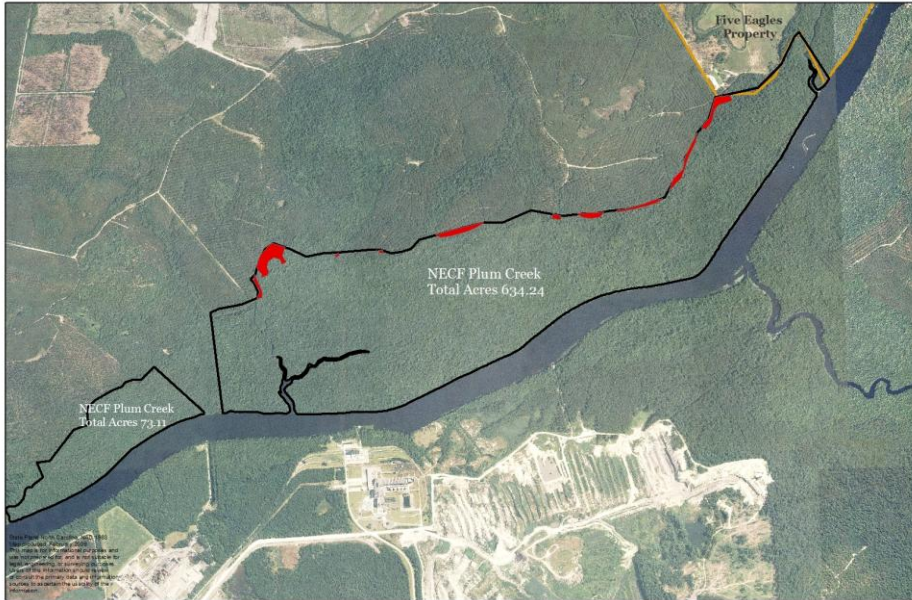
Northeast Cape  
Fear, Pender  
County,  
CWMTF  
Conservation  
Easement



## PLUM CREEK TIMBER TRESPASS

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Northeast Cape Fear River-  
Plum Creek Property  
Pender County, NC  
Timber Encroachment

**Encroachment Areas**  
Total Overall Acres  
of Timber Encroachment  
9,918 Acres



## THE UGLY . . .

Unauthorized  
Dumping

Cool Springs,  
Craven County





## TITLE ISSUES

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Competing  
Ownership Claim  
by Adjoining Owner  
under Marketable  
Title Act

Must have:

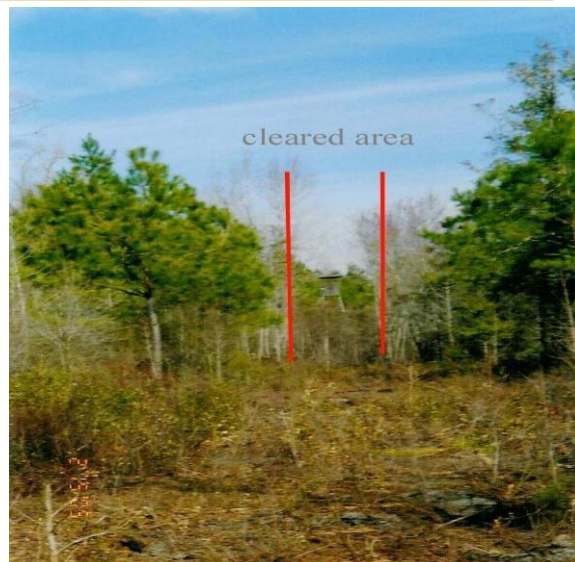
- Current Survey
- Title Examination
- Title Insurance



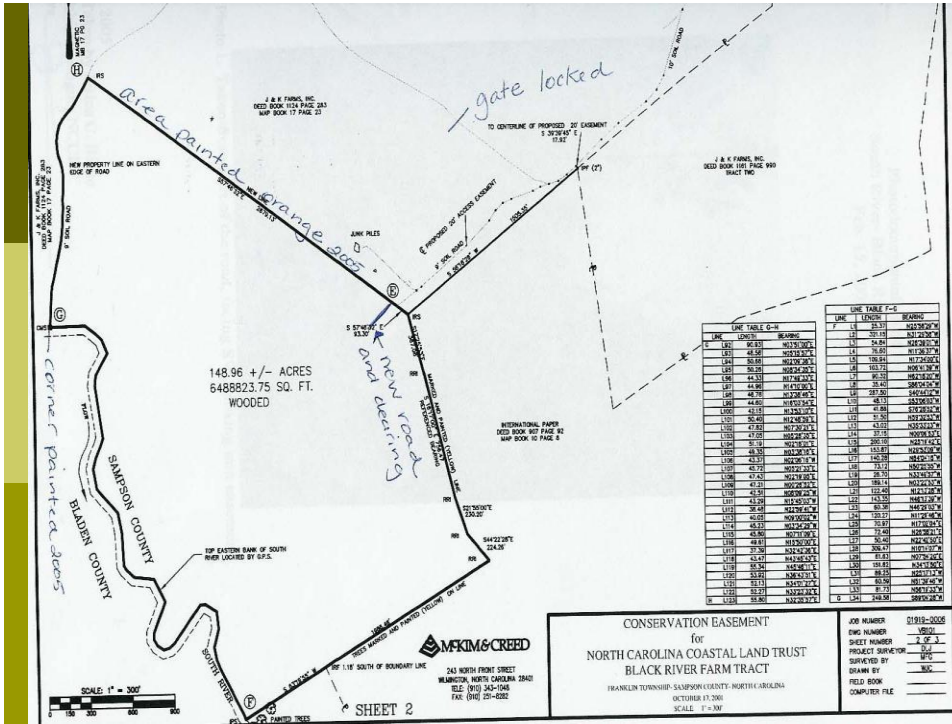
## UNAUTHORIZED TIMBERING AND CLEARING

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South River/  
Black River  
Farms,  
LLC







# REMEDATION - BLACK RIVER FARMS, LLC



## CONSERVATION EASEMENT AMENDMENT

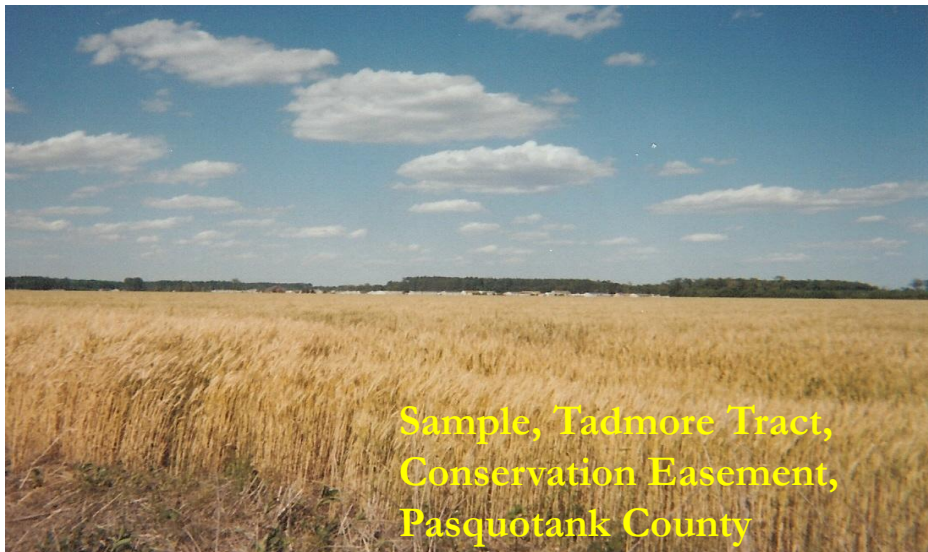
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Sometimes can  
use a  
Conservation  
Easement  
Amendment to  
avoid  
a violation



An ounce of prevention . . .

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Sample, Tadmore Tract,  
Conservation Easement,  
Pasquotank County