

conservation &  
historic preservation  
easements

*to preserve North Carolina's heritage*

Charles E. Roe and Camilla M. Herlevich

Second edition by Camilla M. Herlevich and Lee Lewis Leidy

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## **NORTH CAROLINA COASTAL LAND TRUST**

The **North Carolina Coastal Land Trust** is a nonprofit conservation organization founded in 1992 to help North Carolina coastal communities and landowners conserve and protect locally and regionally valuable natural areas and waters.

The mission of the North Carolina Coastal Land Trust is to enrich the coastal communities of our state through acquisition of open space and natural areas, conservation education, and the promotion of good land stewardship.



CONSERVATION TRUST  
FOR NORTH CAROLINA

## **CONSERVATION TRUST FOR NORTH CAROLINA**

The **Conservation Trust for North Carolina** was created in 1991 to help protect North Carolina's land and water resources, and save the places you love. The Conservation Trust works directly with landowners, local land trusts, and government agencies to protect land along the Blue Ridge Parkway. The Conservation Trust also provides an array of technical and financial services to the state's 22 local and regional land trusts.

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*This publication is a general guide and should not be relied upon as a sole source of information. Any owner wishing to preserve his or her property for the future should consult a qualified attorney and an accountant.*



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## the **need** for private conservation action

When the first edition of this book was published in 1995, the call for conservation was already being heard from the mountains to the coast. Today, the march of development and the loss of natural areas, open spaces, and cultural and historic landmarks have become even more dramatic. The loss to our natural and cultural environment also impacts our state economy. Agriculture and tourism, the number one and two economic engines for our state, respectively, are both inherently dependent upon natural and historic resources. The N.C. Department of Environment and Natural Resources recently documented these alarming trends:

- The rate at which we are developing farm and forest land in North Carolina has increased 16 percent from 1982 to 1997 - from 87,000 acres annually to 101,000 acres annually.
- North Carolina loses 277 acres of open space a day to development.
- By the year 2020, North Carolina's population is expected to increase to 10.8 million. This is a 35 percent increase from the 8 million residents in the year 2000.
- Over 50 percent of the significant Natural Heritage Areas in North Carolina remain unprotected.
- 34 percent of North Carolina's coastal wetlands have been altered to the point that they no longer serve their natural function in protecting water quality.
- Recent floods have caused billions of dollars of structural damage due to inappropriate floodplain development.
- Essential wildlife habitat is lost and the connectivity of wildlife corridors is broken when development is allowed to proceed without proper open space planning. For more information visit [www.enr.state.nc.us/officeofconservation/pages/impactfacts.html](http://www.enr.state.nc.us/officeofconservation/pages/impactfacts.html)

In 2000, Governor James B. Hunt, Jr. articulated a goal to protect, by December 31, 2009, one million acres of open space in North Carolina, beyond the 2.9 million acres already protected by various federal, state, and local government agencies and by private organizations. This bold initiative was enthusiastically embraced by conservationists and citizens around the state. In June 2000, the General Assembly enacted legislation that endorsed the "Million Acre Plan." [N.C.G.S. §113A-241]

However, the promise of the Million Acre Mandate has yet to be realized. The Environmental Finance Center at the University of North Carolina at Chapel Hill published a study that identified a funding gap of \$95M to \$270M per year in additional costs that would be required to meet the Million Acre Mandate. This gap was predicated on the funds required to increase land acquisition from its current pace (43,00 to 60,000 acres per year) to 100,000 per year over the next decade. See Costs and Funding of the Million Acre Initiative, January 24, 2001, [www.efc.unc.edu/projects/MillionAcres/MillionAcresReportFinalColor.pdf](http://www.efc.unc.edu/projects/MillionAcres/MillionAcresReportFinalColor.pdf)

A recent update indicates that progress in land protection during the first four years of the Plan has been slower than the pace needed to meet the 2009 deadline. In the spring of 2003, Governor Mike Easley's administration unveiled its variation on the theme: "One North Carolina Naturally," a planning process whose end result will be a statewide strategy for land and water conservation.

In the meantime, we continue to lose ground, literally, in the effort to save the lands we love. Immediate private conservation action is more important than ever before. Fortunately, landowners can find help among the growing number of private land trust organizations and historic preservation societies now operating locally, regionally, and statewide in North Carolina. Land trusts, or conservancies, are citizens' organizations formed to protect natural and undeveloped lands in communities, watersheds, or larger regions. They are tax-exempt, public-interest charities qualified to receive contributions of property and funds. Many land trusts actively acquire and preserve natural areas, open space, and historical sites, while others are devoted primarily to promoting public environmental education and helping shape public policies toward the environment.

If North Carolina's beauty and the best of our natural and cultural heritage are to be preserved, it will be due to private property owners and private citizens who are concerned enough to become involved in conservation.

In recognition of the tireless efforts of the North Carolinians who continue to save our state's natural and cultural legacy, this publication is dedicated to fellow conservationists and historic preservationists throughout the state — who are saving the land we love.

— *The authors*



## chapter one

# the abc's of easements

**M**any landowners are in a quandary over how to best conserve natural and historic properties while maintaining private ownership. The use of the conservation or historic preservation easement has emerged both in the state and in the nation as the most useful legal tool in private initiatives to protect land and historic properties. These easements can protect natural resources (natural habitats, places of scenic beauty, watersheds, stream and river corridors, productive forestlands, and farms) or cultural resources (archaeological sites, historic properties, and their surrounding landscapes), while at the same time offering compensation or possible tax incentives together with continued private ownership to a private landowner.

Conservation and historic preservation easements are proven land preservation strategies that may be attractive for many private landowners in North Carolina. Conservation or historic preservation easements, which are the focus of this guide, are just two of several alternatives available for protecting natural and historic properties. For information on these other options, ranging from temporary management agreements to outright donations of property, readers may wish to contact their local or regional land trust or historic preservation office or consult other publications by the national Land Trust Alliance, the National Trust for Historic Preservation, or the Conservation Trust for North Carolina.

# What Are Easements?

## DEFINITION AND CLASSIFICATION OF EASEMENTS

A conservation easement is a legal agreement between a landowner and a qualified conservation or preservation organization or public agency that permanently limits the uses of a property to protect the conservation values of the property. In legal terms, an easement is a right of use over the property of another. It is a nonpossessory interest in another person's or entity's land for a limited purpose. Conservation easements may also be referred to as historic preservation easements, façade easements, agricultural easements, or "forever wild" easements, depending upon the resources protected by the easement. In a conservation easement:

- the landowner promises to keep his or her property in its natural or undeveloped condition or to protect its historic integrity; and
- the conservation organization or public agency that holds the conservation easement is granted the right to enforce the covenants or restrictions of the easement and to monitor the property to ensure compliance with the terms of the easement.

Easements are typically classified as either affirmative (positive) or negative depending upon the purpose of the easement.

Affirmative easements allow the holder of the easement to go upon a third party's land for a specific use or purpose. In contrast, a negative easement prevents the landowner from doing certain things with or on his or her property that he or she would otherwise be legally entitled to do.

Therefore, the specific restrictions contained in a conservation easement may be positive (requiring the landowner to take an action) or negative (preventing the landowner from taking an action). Positive covenants might include requirements to keep and protect land or buildings, such as maintaining a historic building in good repair or paying property taxes on time to prevent forfeiture. Negative covenants might include limitations on development, such as restricting tree cutting, new building construction, or road construction.

Occasionally, the landowner may grant the holder of the easement certain affirmative rights in addition to monitoring and enforcement of the easement. Such affirmative rights might include the right of access to the property for scientific studies and field trips or for managing or restoring the natural features of the property.

A landowner's title consists of many property rights, such as the rights to build structures or harvest timber on his land. When the landowner (the grantor) conveys or grants an easement to another

party (the grantee), he or she retains the ownership or right of possession of the property but permanently gives up some rights in the land. That is, the landowner still owns the property, pays taxes on it (typically, at a reduced rate), can live in the house on the land or farm the land just as he or she did before the easement was created, and may sell or lease the land, or pass it to his or her heirs, by will, gift, or other means.

## HOW EASEMENTS ARE CREATED AND THE EFFECT OF EASEMENTS

Easements may be created in a number of ways. However, all conservation or historic preservation easements must be in writing and are written in deed form. Conservation easements are usually permanent, and are recorded with the register of deeds office in the county in which the land subject to the easement lies. Easements run with the title to the land; that is, present and future owners of the land will be bound by the easement's terms and restrictions, unless the terms are formally amended in writing by mutual consent of the then current landowner and the easement holder.

Conservation and historic preservation easements are similar to the restrictive covenants commonly used in residential subdivisions, but differ in that they are intended to provide benefits to the general public, not just to the individual residents within a private subdivision. While subdivision restrictions set a framework for future development of the property, conservation and historic preservation easements are designed primarily to preserve property in its natural, undeveloped condition or to retain its historical or scenic character. The organization that receives the easement is responsible for the ongoing monitoring of the land and enforcement of the terms of the easement.

Conservation and historic preservation easements are attractive options for protecting property. Most landowners continue to use their property just as before. However, granting an easement insures that the future protection of the property is no longer left to chance.

A conservation easement may cover all or a portion of a landowner's property. The permanent protection guaranteed by an easement on a portion of a property may increase the value of the remainder of the property.

A conservation easement can protect woodlands, marshes, beach dunes, farmland, stream valleys, or any other type of natural habitat or rural land. In a residential area, a developer might use such an easement to dedicate a portion of platted land to permanent open space. In a commercial area, the owner of an historic building might sell or donate a preservation easement guaranteeing that the architectural integrity of the exterior (and perhaps the interior) of the building will be maintained.

Conservation easements are flexible agreements containing a set of provisions or restrictions specifically tailored by the landowner/grantor and the recipient/grantee to meet their respective needs and wishes and which, in the discretion of these parties, will best serve to protect the natural or cultural values of a specific property.

Because conservation easements are privately implemented by a landowner, they have special advantages over public land use controls, such as zoning, which are less flexible and are imposed by local governments for public health, safety, and welfare, often without regard to the private landowner's individual needs and goals. Public land use controls lack the permanence of easements, are often applied inconsistently, and do not reward the landowner with equivalent savings in estate taxes, charitable contribution deductions, income tax credits, and property taxes. *(Specific tax considerations/benefits related to donations of easements are detailed below, and in Chapter 2.)*

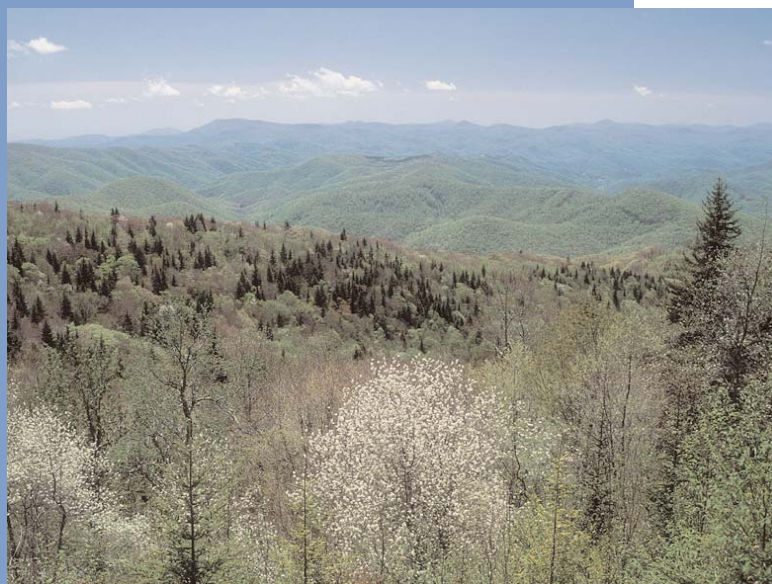
The holder of the easement (grantee) does not acquire the development rights given up by the landowner, nor can the holder use the rights reserved by the landowner. The conservation easement is simply a written legal agreement entered into between the landowner/grantor and holder/grantee for the mutual benefits of land conservation, continued private ownership, and possible tax advantages or other compensation to the owner.

The grantee, either a government agency or nonprofit organization, which is chosen for its dedication to conservation or preservation, takes on the responsibility and legal right to monitor the property to ensure that the terms of the conservation easement are honored.

If a future owner or someone else violates the terms and protections created by the conservation easement — perhaps by erecting a building the easement does not allow — the grantee will work to enforce the terms of the conservation or historic preservation easement and have the violation corrected. If necessary, the grantee may resort to legal action to remedy the violation of the property use restrictions.

## Similarities and Differences between Conservation and Historic Preservation Easements

Although similar in many ways, such as in the manner in which they are created, conservation and historic preservation easements serve different purposes as described below.



## cataloochee ranch

My sisters and I inherited the thousand-acre Cataloochee Ranch where we grew up. More than 5,000 feet high and adjoining the Great Smoky Mountains National Park, the ranch includes lush woodlands, mountain meadows, and one of the few remaining “balds” or ancient mountaintop grassy ecosystems that have long graced the Southern Appalachians.

By the early 1990s, local land prices were escalating phenomenally, due largely to the region's attractiveness for second homes. The ranch's appraised value doubled in a few short years and would no doubt climb higher. We had no interest in selling, but our heirs would face increasingly insurmountable pressures to sell.

Completely open and undeveloped, with 240-degree vistas over hundreds of miles of the Smoky and Blue Ridge mountains, Hemphill Bald is our favorite destination on Cataloochee Ranch. We were reluctant to give up summertime cattle grazing, which maintains the bald's open quality.

I learned that the Southern Appalachians Highlands Conservancy had been protecting the stunning Roan Highlands since the early 1970s, and had lately begun expanding its efforts in other mountain locations. I was gratified to learn that the Conservancy had no problem with cattle grazing. SAHC recognizes that human interaction with outdoor beauty is a legitimate conservation aim.

The appraised value of the 220 acres of Hemphill Bald that found its way into the easement was reduced by 73 percent, well over half a million dollars. Now, we Alexanders are trying to agree on additional acres to put into a conservation easement.

— Jane Alexander



## CONSERVATION EASEMENTS

A conservation easement sets permanent limits on an owner's ability to develop privately held land. The easement can be written to ensure that the land will forever be protected in its natural or rural condition. An easement to protect natural, rural, or undeveloped land imposes certain use restrictions on the property owner. The use restrictions are developed through discussions between the landowner and the grantee and are to a great extent shaped by the land itself, and its particular conservation values. The owner (present and future) retains all remaining rights in the property not limited or eliminated by the use restrictions and can continue to use the property in any way consistent with the conditions of the easement.

Easements must protect the land's conservation values, but they can be tailored to meet the personal and financial needs of the individual owner. Land subject to a conservation easement remains on the tax rolls and continues to provide tax support to the local community but may be taxed at a lower tax rate, an additional advantage to the landowner.

The flexibility of conservation easements is demonstrated by the varying degrees to which land uses may be restricted by the easement. A conservation easement may prohibit development of the land entirely. The easement can preserve land for natural or agricultural use or for historic or educational purposes (for example, on land containing rare wildlife habitat). Or the easement may allow for limited development that will not seriously damage the natural or cultural resources (on a farm, for example, continued farming and additional structures may be allowed). A conservation easement can accommodate appropriate development and even permit some commercial use of the land.

A typical *conservation easement* might:

- protect against heavy commercial development and subdivision;
- specify the maximum number of buildings which may be located on the property;
- specify that the land may be used in future years for low-intensity purposes such as farming, hunting, or wildlife management;
- specify that certain parts of the property such as a buffer area along a shoreline or the edge of a public park will remain forever wild;
- allow for continued farming or timber cutting in compliance with best management standards and a mutually agreed upon timber plan;
- specify that trees can only be clear-cut for purposes such as restoration of habitat, but may be thinned to maintain open spaces or views, or to provide firewood;
- prohibit location of specific structures such as bridges, motels, billboards, or apartment buildings on the property;

- provide specifically for anticipated future activities such as maintenance and alteration of existing structures;
- preserve a specific natural habitat for native plants, animals, or natural communities;
- identify locations on the property where specific kinds of structures may be built in future years;
- allow for the establishment and maintenance of fields, meadows, or wildlife plantings; and
- allow for restoration of wetlands, native forests, or other ecosystems.

Agricultural conservation easements are also a type of land conservation easement. As North Carolina is losing thousands of acres of productive farmland to urbanization, *agricultural conservation easements* are being used more frequently to reduce land loss by prohibiting development practices that would damage the agricultural value or productivity of farmland.

## PRESERVATION EASEMENTS

Preservation easements protect the architectural and historical integrity of structures by imposing limitations on the types of alterations that may be made to the historic structures. In some cases, the owner may choose only to protect the exterior of the building in what is known as a *façade easement*. A preservation easement may also be designed to protect a building's interior and important elements of the surrounding landscape or associated archaeological remains.

As in the case of a conservation easement, the grantor of a preservation easement gives up only specified development rights in the property. These rights are held by a conservation or preservation organization or public agency that is entrusted with supervising the continued preservation of the structure (and landscape, if specified) according to the grantor's wishes. The grantor and the grantee mutually agree upon the extent of the restrictions placed on the property.

A preservation easement generally imposes both affirmative duties and limitations or negative covenants upon the grantor. Continued upkeep, maintenance, and repair, which are almost always the responsibility of the property owner, are examples of affirmative duties or positive covenants. Limitations or negative covenants typically protect an historic property from adverse changes. For example, a preservation easement may require the owner to make certain changes to the property, such as the restoration or removal of a recent addition that is detrimental to the historic integrity of the building.

Among the provisions that might be specified in a *preservation easement* are:

- landscaping consistent with the style and age of the building;
- a prohibition against physical or structural alterations and

changes in exterior color or surfacing without the approval of the grantee;

- a prohibition against the alteration or removal of specified interior features;
- continued maintenance of the property by the owner;
- a prohibition against the demolition or removal of structures without approval of the grantee;
- a prohibition against fences or shrubs that bar visual access by the public;
- general public access to the property a few days each year;
- in case of contemplated sale, a reservation of a right of first refusal, by the grantee;
- a prohibition against the removal of trees or shrubbery except in the case of disease or with the approval of the grantee; and
- a requirement that porches and chimneys be retained, in keeping with the historic nature of the property.

Archaeological resources, or land surrounding an historic structure, may be conserved by *combining elements of conservation and preservation easements*. If an easement is desired for an archaeological site, and no structure of historic or architectural importance is involved, a conservation easement may be the most appropriate land preservation tool. For example, placing a conservation easement on a prehistoric Native American village located on a site that is currently wooded floodplain could serve to protect both the archaeological site and any natural values of the property.

A preservation easement granted for a structure may also be designed to include adjacent or surrounding property, which has or is suspected to have important archaeological evidence of previous activities or features associated with the structure.

## How to Donate an Easement

A donation of a conservation or an historic preservation easement that meets federal tax code requirements — that provides public benefit by permanently protecting important conservation or historic resources — can qualify as a tax-deductible charitable donation. For income and estate tax purposes, the value of the donation is the difference between the land's value with the easement and its value without the easement. Placing a conservation or historic preservation easement on private property may also result in property tax savings.

Perhaps most importantly, easements can be essential for passing land on to the next generation. By reducing the land's development potential, an easement lowers its market value, which, in turn, lowers estate and inheritance taxes. Whether the easement is given during the donor's life or by will, it can make a critical difference in the heirs' ability to keep the land intact.

### WHO MAY DONATE AN EASEMENT?

Only the landowner may grant an easement or any other interest in the property. In the end, the decision to give an easement is a personal one that must be made by the property owner alone. All owners having an interest in the property must agree to the terms of the conservation or historic preservation easement and sign the instrument creating the easement. Additionally, in North Carolina, the spouse of each owner having an interest in the property that will be subject to the conservation or historic preservation easement must sign the instrument creating the easement unless a premarital agreement between the spouses has been recorded in the county in which the property lies that eliminates this legal requirement. An owner should always consult competent legal and tax counsel to assure that his or her wishes are successfully translated into the provisions of the easement agreement and that every possible tax benefit is considered.

### TO WHOM MAY A CONSERVATION OR HISTORIC PRESERVATION EASEMENT BE GIVEN?

Easements may be granted to a *qualified* conservation or preservation organization, either governmental or private nonprofit. It is the task of the property owner to choose the best recipient.

In North Carolina, both state and local governments may accept easements. At the state level, this includes the Department of Environment and Natural Resources (DENR) and the Department of Cultural Resources. Private national organizations such as The Nature Conservancy, the National Audubon Society, the Trust for Public Land, and the National Trust for Historic Preservation, among others, may accept easements. At the state and local level, county and municipal governments, the Conservation Trust for North Carolina, Preservation North Carolina, local and regional land trusts, local historic properties commissions, and other conservation and preservation organizations are also eligible to accept and hold easements.

Under North Carolina law, the federal government is an authorized holder of easements but an easement donation to the federal government is not eligible for the state income tax credit.

### CHOOSING A RECIPIENT FOR A CONSERVATION OR HISTORIC PRESERVATION EASEMENT

In choosing among the range of potential grantees, the owner should consider the size and location of the property and the kind of protection desired for its features or resources. The owner should also be sure that his or her interests and concerns are shared by any prospective grantee.

With increasing frequency, private owners are entering into conservation agreements with nonprofit conservation organizations or with local historical societies for preservation easements. These

## matthews tract

What is important to folks who protect their land through conservation easements?

Pacolet Area Conservancy (PAC) has completed many easements, some large and complicated, and some small and simple. Easements are created by all types of people for all types of reasons. Tax relief is one of the incentives offered to large landowners to convince them that conservation easements are a good idea, particularly for the potential estate tax, federal income tax, and county property tax benefits associated therewith. Assurance that landowners' wishes will be respected after the landowner's death is another incentive. Yet the greatest incentive is the assurance that the natural beauty of a protected piece of land will endure in spite of any development and destruction around it.

In 2000, a delightful woman named Doris Matthews donated a conservation easement to PAC on 16 acres of woodland in Polk County. The property contains a small log cabin where she has spent nearly every summer since the 1950s. Doris participated in writing the easement, stipulating that no activity be allowed that would harm any of her "critters," the raccoons, possums, snakes, bobcats, and such. Doris is not a wealthy person — tax benefits were not a reason for the donation.

The easement was finalized at the office of her attorney, Andy Haynes. He wanted to make sure that Doris understood exactly what she was doing. Her property, which had significant development potential, would be reduced in value by at least half as soon as she signed the conservation easement. Did she fully understand the consequences of what she was about to do? Doris responded, "Andy, are you talking about money? I don't care about money. I care about what will happen to my critters when I am gone." Andy's response was equally clear: "Thanks Doris, that's all I needed to know."

Conservation easements are written for people who care more about the critters than they do about the money. On behalf of those critters, "Thanks, Doris."



organizations must be certified by the IRS as qualified public charities in order for a donor to take advantage of the tax benefits for making a gift of an easement.

A gift to a unit of state or local government may be the first choice in other cases. Agencies of local government are often well prepared to insure that the terms of an easement are observed and the tax benefits are no less applicable in these cases. A local government agency or soil and water conservation district may make the best grantee for some parcels. A government agency may also be the best recipient of an easement designed to protect an adjacent park or its scenic view. For historic structures, local historic properties commissions also should be considered as possible recipients.

Chapter 3 includes contact information for some major organizations that are qualified to hold easements or provide advice. Again, to make the best choice, the advice of legal counsel is necessary.

### WHAT EXPENSES WILL THE GRANTOR INCUR?

In most cases, the landowner/grantor of an easement will incur some costs. The grantor may pay for the land survey, appraisal, accounting fees, and legal fees for tax planning and for preparing and recording the easement.

The recipient/grantee will also incur costs in the process of receiving the easement, which may include paying for baseline inventories and audits of the property, legal fees, title examination and title insurance, the perpetual costs for ongoing monitoring and, when necessary, enforcement of the easement's terms. The grantee's long-term monitoring and enforcement expenses may be substantial. In many cases, the grantee may ask the grantor for assistance in providing or identifying sources of funds to cover its share of the transaction costs and to endow its long-term stewardship and monitoring obligations.

### WHAT CONSERVATION PURPOSES ARE RECOGNIZED BY THE IRS AND THE STATE?

The federal and state governments only provide tax incentives for easements that are given for certain qualified purposes. The tax reductions provided to donors of conservation and historic preservation easements are public subsidies limited to the protection of land resources and historic landmarks that are of greatest public value.

To qualify as a charitable contribution, and thus to earn federal and state income tax reductions, the easement must be **perpetual**, must be made to a **qualified donee** (generally, a nonprofit conservation or preservation organization or a public agency), and it must **meet one or more of the following four conservation**

**purposes** set forth in the **federal tax code**:

- **Preservation of land for public outdoor recreation or education.** This provision generally requires regular access by the public.
- **Protection of relatively natural habitats for fish, wildlife, or plants.** Recognition by a public agency responsible for identifying important natural areas and ecologically significant sites is generally required by this provision, although public access to the property is not.
- **Preservation of open space — including farm and forest land — according to a clearly delineated governmental conservation policy.** To qualify, the land usually must be near other public lands or waters, a significant scenic resource, farmland within a designated agricultural preservation district, or recognized by a formal governmental plan or policy as land that is in the public interest to preserve and maintain in undeveloped condition. Physical public access is not generally required, although public visual access is required for scenic easements.
- **Preservation of historically important land or buildings.** Qualified properties are those listed on or eligible for inclusion on the National Register of Historic Places. Some limited visual or physical access may be required.

North Carolina state law also awards tax credits to donors of land or partial interests in land for conservation purposes. State income tax credits and deductions for the donation of easements are calculated on the basis of the reduced market value of the affected property. However, the conservation purposes recognized by the state are not identical to those in the federal tax code. Conservation purposes recognized by the state conservation tax credit program include:

- public beach access and use;
- public access to public waters;
- public access to public trails;
- fish and wildlife conservation; and
- other similar conservation purposes.

Historic properties that include such conservation purposes may also qualify for the state income tax credit in addition to federal income tax deductions.

### PROPERTIES ELIGIBLE FOR EASEMENTS AND ASSOCIATED TAX BENEFITS

To determine whether a property will qualify under one or more of the federal and state conservation purposes listed above, a natural or cultural resource inventory should be prepared by a competent professional. The inventory should include maps, photographs of existing buildings and roads, descriptions of natural habitat types and special natural features, lists of plants and animals, or documentation of historic structures or archaeological remains.

The inventory helps determine which conservation purpose is met and will distinguish sensitive areas from other lands that might be appropriate for limited development or other uses. The inventory also provides documentation the grantor will need to confirm the conservation or preservation qualifications of the property for tax purposes. The inventory can serve as the baseline report, which is required by federal tax rules, to document the condition of the land at the time the easement is donated. Additionally, a baseline report may serve as evidence in case of later controversies about land uses and improvements.

To determine whether a property will qualify under the state income tax credit program, the owner may file an application for determination with the state Department of Revenue in advance of making the gift. (*See Chapter 2*)

### HOW ARE EASEMENTS VALUED?

An appraisal is necessary to establish the value of a conservation easement for tax purposes. Appraisers consider the nature of the restrictions, the character of the property, and the market value of the property with and without the easement. The difference between the two market values is the value of the easement. (Please note that appraisers must be qualified according to standards set by the IRS.)

In general, the value of an easement is equal to the loss in the market value of the land after the easement has been executed. This is determined by establishing the original value of the developable land without the easement, for example, \$50,000, and then subtracting the value of the land with the easement, for example, \$30,000. In this case, the market value of the land has fallen by \$20,000, which equals the value of the easement for purposes of tax computation. An alternate method of valuation is to compare easement sales (where there is such a database) directly with the subject easement. (*See Chapter 2 for more detailed information about tax benefits.*)

## Managing Properties Under Conservation or Historic Preservation Easements

### WHO MAINTAINS AND MANAGES PROPERTY UNDER EASEMENT?

Generally, the landowner/grantor retains ownership along with the right and duty to manage and care for the property. However, in cases where the recipient organization has special experience in managing a particular habitat or in restoring or maintaining an

historic feature, it may be appropriate for the grantee to be given the right to undertake certain management tasks.

### WHO ENSURES THAT THE CONSERVATION OR HISTORIC PRESERVATION EASEMENT IS HONORED?

The landowner/grantor will want assurance that the recipient/grantee that holds the easement will always monitor the property and enforce the terms of the agreement. But because policies and personnel change, consideration should be given to the possibility that the recipient organization or governmental body may in the future fail to adequately enforce the easement restrictions placed upon the property. Although this potential problem can be minimized by careful selection of the grantee, it is recommended that a clause be inserted in the easement providing for its transfer to another designated grantee if the original recipient organization fails to enforce the terms of the easement or ceases to exist. In this manner, the property owner is assured that the easement and its enforcement obligations will be maintained by another private group or governmental agency should the first grantee fail to protect the land, site, or structure. The second grantee can also serve to monitor the activity of the first.

Easements must be drafted to meet statutory and common law requirements concerning enforceability of the restrictions and also should address long-term issues of land stewardship and changing circumstances to the satisfaction of both the grantor and grantee.

### MUST THE PUBLIC HAVE ACCESS?

Not necessarily! The public has no more right to trespass on land covered by an easement than on any other private property. Most conservation easements are over land that qualifies as “significant natural habitat” or as “open space.” In the case of significant natural habitat, no public access of any sort is required in an easement. For lands that qualify as scenic open space donations, visual access of the property may be required, but that access usually may be met from a public road or waterway. Physical access of the property is required only if the conservation easement’s purpose is, in fact, for public recreation or study. For instance, a public agency proposing to establish a system of hiking trails through private property must acquire an easement (by gift or sale) from the property owner that specifically grants the public the right to walk a defined path across the owner’s property.

Some form of public access or public view of the property is required for the grantor to obtain a charitable contribution for an historic preservation easement. Although this requirement does not mandate public access to the interior of residences, the public must be granted the opportunity to view those characteristics and



## jubilee farm

In 2001, Mr. and Mrs. Simon B. Rich generously donated a conservation easement on their scenic and historic 250-acre Jubilee Farm to the North Carolina Coastal Land Trust. The property is located along Poplar Neck Road (Highway 32) just southeast of Edenton in Chowan County. An antebellum plantation known as Poplar Neck Plantation in the late 1800s, Jubilee Farm includes a mixture of agricultural land, managed timberlands, old-growth hardwood stand, and pasture. The stately homestead contains numerous outbuildings and white-fenced fields. A beautiful tree-lined drive leads to a circa 1853 restored plantation house that qualifies for listing under the National Register of Historic Sites.

Mr. and Mrs. Rich purchased the farm in the late 1970s and worked over the years to restore it to its present condition. In December 2001, Mr. and Mrs. Rich decided to place a conservation easement over the entire property to forever protect its scenic and historic values. "My interest is to preserve the original Poplar Neck Plantation and to encourage other neighboring landowners along this approach to Edenton to do the same," says Mr. Rich.

— Janice Allen

features of the property that are being preserved. For example, if the facade of an historic home is protected by easement and the home can be viewed from an adjacent public street, then the house need not be opened to the public. However, a home preserved for its exterior and interior characteristics may require some regular, if limited, visitation (for example, twice yearly).

## Common Questions About Easements

### HOW ARE THE PROTECTION RESTRICTIONS DETERMINED?

Conservation and preservation easements have the great advantage of flexibility — they can be written to conform to the desires of the individual property owner, as long as they are consistent with the requirements of the tax laws. Therefore, it is the landowner and the recipient/grantee who, collectively, evaluate the land and decide how much future development is desirable and what restrictions are needed. The easement is then written accordingly. As described above, easements contain a series of restrictive covenants, relating to various potential uses of property, together with the grant of duties and certain limited rights to the grantee.

An easement's restrictions must be tailored to the particular resource values and characteristics of the property. The degree to which property is protected clearly depends upon the strength of the development restrictions in the easement. An owner wishing to preserve a parcel permanently in a wilderness condition will want to restrict all development. Another owner, with different goals, may create an easement that permits a few new structures, limited tree cutting, or other modest uses.

Depending upon the size and character of the land, it may be possible and appropriate for the owner to reserve certain limited development rights while assuring the protection of the most important environmental or historic resources. Examples might include subdividing several parcels, selective timbering, maintenance of impoundments, hunting and fishing, or even the construction and maintenance of a certain limited number of new homes.

The main interest of the recipient/grantee entering an easement agreement will be that sufficient protection is provided for the resources, structures, or sites involved to make the task of administration worthwhile. The grantee will consider the property owner's goals and, if differences of opinion arise, will look for a compromise that mutually satisfies both parties. Generally, the normal maintenance on a property is not restricted in any way by an easement.

### HOW LONG DOES A CONSERVATION OR HISTORIC PRESERVATION EASEMENT LAST?

The duration of the easement is the choice of the grantor and the grantee and must be decided at the time of negotiation. Under North Carolina property law, an easement may be created for a period of years or it may be perpetual. However, if the landowner wishes to claim any federal or state income tax or estate tax deductions, the easement must be granted in perpetuity. In most cases, the owner is seeking to preserve forever the current condition of the property and, therefore, will prefer a perpetual easement.

An easement created for a specified number of years is called a term easement. No income tax or inheritance tax deductions are awarded for a term easement. The owner may, in fact, be liable for federal gift taxes if an easement donation has a substantial value and does not qualify as a perpetual conservation contribution.

Whether perpetual or term, an easement agreement binds all future landowners within the specified time period according to its original provisions.

### CAN CONSERVATION OR HISTORIC PRESERVATION EASEMENTS EVER BE CHANGED?

Because the conservation or preservation easement generally is entered into for the permanent preservation and protection of land or other resources, it is not designed to allow for quick and simple alterations in the terms. Furthermore, when the grantor wishes to take an income or estate tax deduction, then the easement must provide that it may be terminated only with the approval of a court of law upon a demonstration that the original purpose for the easement can no longer be met. Amendments are possible, provided that the conservation values are still protected; written agreement between both the landowner and the holder of the easement is required. The written amendment must then be recorded in the Register of Deeds office in the county in which the land subject to the easement lies. In practice, easements are seldom modified. The landowner should keep in mind that the perpetual character of an easement is the basis for all federal tax benefits as well as for realistic conservation.

### IS LAND SUBJECT TO A CONSERVATION OR HISTORIC PRESERVATION EASEMENT IMMUNE FROM CONDEMNATION?

Generally, a conservation or historic preservation easement will not insulate land or property from the condemnation power of the state or federal government. The government's power of eminent domain is usually supreme regardless of the number of private covenants, easements, or other devices landowners may use in

attempting to protect their properties, even with charitable organizations. There is, however, one exception: the gift or sale of an easement to the federal government will insulate the land or building from a state's power of eminent domain. In practice, however, the fact that land or buildings are subject to easements may make condemnation unattractive to the condemning authority from a public relations standpoint.

### CAN AN EASEMENT BE PLACED ON MORTGAGED PROPERTY?

Prospective donors and recipients should know whether there is a mortgage on the property for which an easement is proposed. Check the title early. If a mortgage exists, the landowner and the mortgage holder must agree for the mortgage to be subordinated to the terms of the easement in order for the easement gift to be tax deductible.

### ARE EASEMENTS EVER PURCHASED?

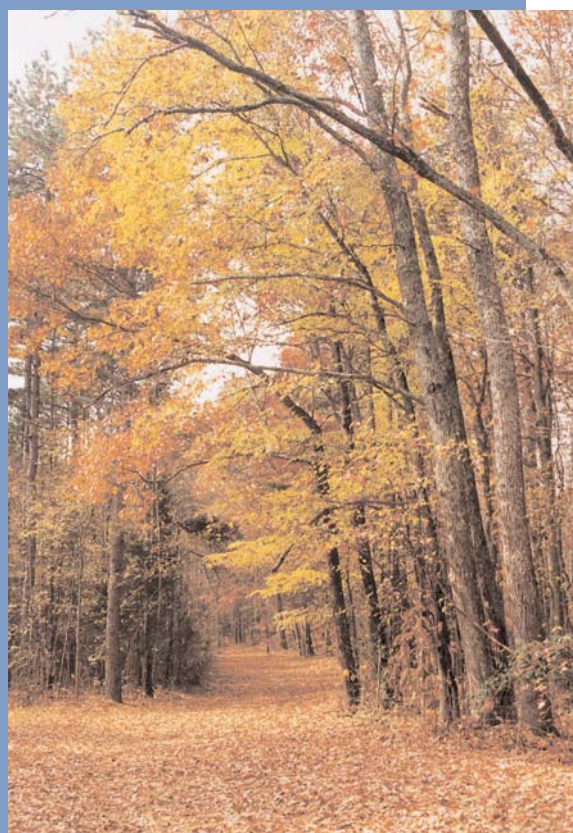
Relatively modest funding programs, sponsored primarily by federal government programs administered by the U.S. Fish and Wildlife Service and the Department of Agriculture's Natural Resources Conservation Service, make small grants available to landowners for such purposes as wildlife habitat enhancement, environmental enhancement, and reforestation. Typically, such grants pay for affirmative management activities on the ground. The landowner is usually required to provide a match (of either money or in-kind services) and frequently is required to convey an easement to the agency to assure that the enhancements to the land remain intact. The terms of these easements may be 10 years, 30 years, or perpetual, depending on the particular grant program guidelines.

In the last five years, several new, larger sources of funding have become available for the purchase of perpetual easements. The North Carolina Clean Water Management Trust Fund offers grants to land trusts and state and local agencies for easements that protect water quality. The federal Forest Legacy Program, administered by the North Carolina Division of Forest Resources, sponsors a competitive grant program for easements that protect forest resources in the state. The federal Farmland Preservation Program, administered by the Natural Resources Conservation Service, makes grants for easements that protect agricultural lands. Each of these programs has its own particular guidelines and eligibility requirements. Taken together, they are adding at least \$50 million annually to the state's funds for land acquisition, and are making a substantial contribution to the protection of conservation resources. Landowners have more options available today than they did even ten years ago to protect their land.

## ramah creek

Frank Bragg raised his family on a small farm in southern Mecklenburg County, but he felt forced to sell his property when rampant development swallowed the surrounding area. When he and his wife Kathy bought 211 acres in the northern part of the county, outside rapidly growing Huntersville, Frank was concerned that the same thing would happen again, so he approached Catawba Lands Conservancy about protecting his property with a conservation easement. With grant funding from the N.C. Clean Water Management Trust Fund, the Conservancy purchased a conservation easement that buffered Ramah Creek, and the Braggs donated an easement on the balance of the property.

Then Frank set about encouraging his upstream and downstream neighbors to do the same thing. The Conservancy helped negotiate an option on a key parcel, attracted a conservation buyer, and served as a resource — but the effort was primarily driven by landowners. These conservation easements also alleviated the estate tax concerns of several landowners. Today, the result is the Ramah Creek Conservation Area: 481 contiguous acres of private land protected with conservation easements. The Conservation Area adjoins the Cornelius-Davidson-Huntersville District Park, and several other neighboring landowners have agreed to place easements on their property. Frank and the Conservancy expect to eventually see more than 1,000 acres protected along Ramah Creek.



CATAWBA LANDS CONSERVANCY





## chapter two

# easements and tax benefits

The donor of a qualifying conservation or historic preservation easement may claim the value of the easement as a deduction for income, gift, and estate tax purposes and may be able to reduce real property taxes. In order to qualify for tax reductions, an easement must meet federal and state tax code requirements essentially by providing public benefit through permanent protection of important conservation or historic resources. A conservation or historic preservation easement does not, however, have to cover an entire property, nor preclude all use or development, nor allow public access to qualify for tax benefits.

The potential tax advantages of a conservation or historic preservation easement gift must be determined by the donor, assisted by legal counsel, a qualified appraiser, and by tax officials. Because each easement donation represents a unique situation and because tax laws change frequently, the following information is intended only as a general guide. **Both landowners and easement holders should seek competent legal and tax advice for any easement transaction.**

# Valuation of Conservation and Historic Preservation Easements Under Federal Tax Law

The tax advantages from a conservation or historic preservation easement donation are related almost directly to the value of the gift. Since 1976, federal tax laws have allowed the donor of a qualifying easement to claim its value as a deduction for income, gift, and estate tax purposes (*26 U.S.C. 170(b) and 2055(a)*).

Conservation and historic preservation easement values vary greatly. In general, the highest easement values (and greatest tax benefits) result from very restrictive conservation easements on tracts of highly developable land under intense development pressure or near metropolitan areas. Such easements will greatly reduce the value of the land. The actual extent of the decrease in property value must be determined by a qualified appraiser (as defined by the IRS) who considers the nature of the restrictions imposed by the easement and the character and location of the property. The nature of the restrictions is important because restrictions limit the actual and potential uses of the property.

Usually, the appraiser applies a “before and after test” to value the conservation or historic preservation easement by calculating the difference between the value of the property before the easement restrictions are imposed and the value of the property after the restrictions are placed on it (*conforming to Treasury Regulation 1.170A-14(b)(3)(i)*). The value of a conservation or historic preservation easement is equal to the loss in value of property resulting from the easement restrictions. By way of example, if a property is worth \$500,000 before the easement restrictions are



All landowners are strongly encouraged to seek tax advice from an independent accountant and legal advice from an independent, experienced estate planning attorney when considering placing a conservation or historic preservation easement on or donating all or a portion of their land. All decisions regarding donating or placing a conservation easement on land for the protection of property for the benefit of future generations should be made only after consultation with experienced, qualified attorneys and accountants.

## hendren farm



VIRGINIA WEILER

Ola Williams Hendren grew up on a farm near the banks of the Mitchell River, seven miles, as the crow flies, from the river's headwaters. She has lived on the farm all her life, now residing in a converted tobacco barn. Ola has hiked every foot of the rugged terrain, from fields to forest, and from barn to riverbank. She loves it all.

In her mid-seventies, Ola began the battle of her life, to save her family farm from becoming “just another subdivision.” She was up to the task, and with the help of the Piedmont Land Conservancy, she achieved her goal.

You see, the Mitchell is not just any river. It is Ola's river. “This land is precious to me, as it was to my parents. I want this area to remain in its beautiful state,” she declared. For at least 10 years, Hendren and others who live along the Mitchell fought development along the river. They sought to give the river a designation that would protect it from future development.

The state designated the Mitchell River as Outstanding Resource Waters, a designation given only to the most pristine waters. A fisherman's dream, the headwaters of the Mitchell is home to a pure southern strain of native brook trout.

In 1997, Ola, at age 83, began to work with the Piedmont Land Conservancy, ultimately donating a conservation easement on her 85-acre homeplace to the Conservancy. Her land includes almost a mile on the river and two tributaries. For Ola, the easement forever guarantees that her land will remain the way she wants. “We know what could happen to this land and the Mitchell River,” Hendren said. “I'm going to try before I leave this earth to get regulations to keep this river clean.”

The remaining interest in the property has been donated to the N.C. Agricultural Foundation Inc. of North Carolina State University. It will be used as a site for farm education.

Ola's farm is one part of the Piedmont Land Conservancy's effort to protect 10,000 acres in the Mitchell River watershed. To achieve that goal, the Conservancy has joined with the Mitchell River Coalition, a group of landowners and public and private agencies. The group's efforts include land protection, water-quality testing, and restoration of degraded stream banks and wooded buffers.

And Ola, with her beloved 87-acre farm, was the first easement of that larger project. Her persistence has helped to preserve the beauty of her land, and has given momentum to the promise of preserving 10,000 acres. Ola has made her mark in the conservation world.

imposed and the conservation easement that will prohibit further development decreases the property value to \$200,000, then the value of the conservation easement donation is \$300,000.

It is the responsibility of the donor to select and hire an appraiser to determine the value of charitable donations of land or easements, bargain sales of land, and other contributions of property (excluding money and securities) with a value exceeding \$5,000. Because there are substantial penalties for overvaluation, the appraisal should be done by a professional appraiser who is familiar with both the property within the area and with conservation and historic preservation easements.

The appraisal must be done no earlier than 60 days before making the contribution and no later than the date on which the deduction is first claimed on the tax return. The IRS requires that Form 8283 be submitted with the tax returns filed by individuals. This form is, in essence, an “appraisal summary” that includes basic information from the appraisal and must be completed after the date of the contribution. Both the appraiser and the grantee complete certain portions of the form before it is submitted with the donor’s tax return.

The IRS has a number of additional rules specific to appraisals of conservation and historic preservation easements. For more information, consult *Appraising Easements* available from the Land Trust Alliance (see Chapter 3).

## Tax Advantages for Individuals and Families

### FEDERAL TAX DEDUCTIONS

The Internal Revenue Service (IRS) allows an individual to *deduct* the value of a conservation or historic preservation easement that is donated to a government agency or a tax-exempt charitable organization. The rules governing deductions for easement donations are generally found in Section 170 of the Internal Revenue Code and in the regulations that the Department of the Treasury has adopted pursuant to this section of the tax law. *These regulations require that the conservation or historic preservation easement be perpetual to qualify for federal income tax purposes.*

### LONG-TERM CAPITAL GAIN PROPERTY

If the conservation or historic preservation easement gift is made during the donor’s lifetime and the land is long-term capital gain property (that is, it has appreciated in value), the donor may claim an income tax deduction for the full value of the easement. To

prevent a donor from using the deduction to avoid paying tax, the IRS places a cap on the amount of deduction that can be claimed in the year the donation is made. The cap is set at 30% of the adjusted gross income for individuals (see 26 U.S.C.

170(b)(1)(C)(i)). Individuals may carry over any unused portion of the donation for the next five succeeding years and deduct the same percentages each year (see 26 U.S.C. 170(b)(1)(C)(ii)).

It is important to note that Congress frequently modifies the holding period for capital gain property. Recently, the federal law increased the holding period from 12 to 18 months for purposes of computing tax on long-term capital assets. However, the holding period to determine whether an asset is long-term or short-term for purposes of charitable deductions was not changed, and continues to be one year and a day.

For example, an owner who donates an easement valued at \$100,000 and who has an annual adjusted gross income of \$60,000 may claim an income tax deduction of 30% of that income (\$18,000) in each of years 1 through 5 and the remaining \$10,000 in year 6.

### ORDINARY INCOME OR SHORT-TERM CAPITAL GAIN PROPERTY

If the land is ordinary income property, or short-term capital gain property, the value of the contribution is limited to the adjusted basis of the property. No deduction for unrealized appreciation is allowed. The adjusted basis can be deducted in full, subject to a 50% Adjusted Gross Income limitation, with a five-year carryover provision.

### ALTERNATIVE MINIMUM TAX

The U.S. Congress in 1993 exempted gifts of land and interests in land (easements) to charitable organizations from the federal Alternative Minimum Tax (AMT), which applied before to taxpayers with relatively large incomes. Previously, application of the AMT had limited some taxpayers’ federal income tax deductions to “cost basis,” often a small fraction of the real property value. No deduction allowance was made for the property’s appreciated value. The tax law change provides an enormous incentive for donations to qualified land trusts and other nonprofit organizations.

### STATE TAX CREDIT

North Carolina also has special state income tax incentives for qualifying donations of interests in real property for conservation purposes (*N.C. General Statutes §105-130.34 et seq. and §105-151.12, enacted in 1983, and amended several times subsequently, most recently in 2002*). Donations of land or partial interests in land may be given to:



## blue ridge parkway

The Conservation Trust for North Carolina is a private land trust working to protect critical land resources across the state both through direct action and as the “umbrella” service center for the state’s two dozen local and regional land trusts. In 1996, administrators of the Blue Ridge Parkway and the Governor’s Year of the Mountains state commission invited the group to assume leadership in protecting the Blue Ridge Parkway’s scenic and natural corridor. Protecting the parkway involves coordinating partnerships with the National Park Service, local land trusts, private citizens, and foundations.

The Blue Ridge Parkway is the nation’s oldest and longest scenic roadway and attracts more visitors than any other unit of the national parks system. Twenty million people annually travel the Parkway, contributing more than \$2 billion to the regional economy and infusing more than \$100 million in state and local taxes. In North Carolina, tourism is the state’s second largest income-producing industry, and the Parkway is its top tourist attraction. Although national forests bound 190 miles of the Parkway’s 469 miles on both sides, most of the lands within view of the road are in private ownership. Most of the Parkway’s publicly owned right of way averages just 800 feet wide and is as narrow as 200 feet in some sections. Until recently, most of these lands were farms and forest, but regrettably these natural and rural areas are being eliminated and the Parkway’s scenic beauty is threatened in numerous locations by increasing residential and commercial development.

The Conservation Trust has protected more than 20,000 acres in over 20 locations along the Parkway by using a multifaceted approach, including landowner identification and education, land purchases, conservation easement donations, limited development using open-space conservation designs, and property re-sales to conservation buyers.

- state or local government units; and
- charitable nonprofit organizations qualified to receive and administer land for conservation purposes.

State law provides a substantial income tax *credit* program to help landowners protect the environment (a dollar-for-dollar reduction in taxes owed) equal to 25% of the fair market value of the donated property. The credit is available for gifts of land and easements for conservation purposes made to qualified donees, and is allowed against individual and corporate income taxes when real property is donated for conservation purposes. This tax credit is limited, however, to \$250,000 for individuals and \$500,000 for corporations. Married couples must file a joint return to claim the credit.

Although easements, covenants, and other rights may be legally created for a term of years or in perpetuity, no state tax reductions are awarded unless the restrictions are permanent.

The full tax credit can be used in the year of the gift, and any unused portion of the credit may be carried forward for the next successive five years until the total credit amount is used. Credit taken in any year may not exceed the amount of income tax imposed by the state, reduced by the sum of all other credits. Any remainder of the gift value in excess of the \$250,000 credit limit may be claimed as a regular charitable deduction (a reduction in taxable income upon which the tax is computed) under *N.C.G.S. §105-130.9*.

To qualify for the credit, donations of land or easements must be donated to and accepted by the State, a local government, or a body that is organized to receive and administer lands for conservation purposes and qualified to receive charitable deductions. The taxpayer must file with the tax return for the taxable year in which the credit is claimed a certification by the Department of Environment and Natural Resources (DENR) that the property donated is suitable for one of the following valid public benefits:

- fish and wildlife conservation;
- public access to public waters or trails;
- public beach access; or
- other similar land conservation purposes.

The credit also applies to historic properties that meet one of the stated conservation criteria. To receive the credit, the donor must attach the DENR certification to his or her state tax return (*N.C.G.S. Sec. 150-151.12*).

Although the conservation purposes recognized in the state revenue law are not the same as those in the federal tax code, the state liberally construes benefits of conservation gifts. However, the state credit is not allowed for gifts to the federal government, for lands dedicated to conservation due to local government regulations, nor for gifts made to increase building density levels.

When a donor applies for tax credit certification or an advance tax ruling, DENR staff reviews the donation and may visit the site, and then makes a recommendation to the NC Department of Revenue. Applications may be obtained from: *NC Conservation Tax Credit Program, NC Department of Environment and Natural Resources, 1601 Mail Service Center, Raleigh, NC 27699-1601, Tel. 919-715-4191, [www.enr.state.nc.us/conservationtaxcredit](http://www.enr.state.nc.us/conservationtaxcredit)*

## ESTATE TAXES

Federal estate (death) taxes and state estate taxes frequently prevent land with substantial value from being passed intact to heirs. Upon the owner's death, heirs may find that the federal estate tax alone — which is based upon the land's current fair market value and is levied at rates that have been as high as 55% — can require payments of hundreds of thousands of dollars. Although Congress enacted a staged, ten-year reduction of the estate tax rates, also increasing the amount of an estate exempt from tax, the law reverts to 2001 levels in 2011. For example, there is no federal estate tax on assets up to \$1 million in 2003 and the tax rate for assets above \$1 million is 49%. Even with the estate tax relief provided in 2001, selling all or part of the property may still be the only avenue available to pay the estate tax in cases of very valuable land. It is also important to remember that although property or an entire estate may be transferred to one's spouse without tax liability, this marital deduction simply defers the tax for which heirs will eventually be responsible.

Both the State of North Carolina and the federal government tax property that is transferred upon the owner's death. These estate taxes are imposed upon and paid out of the estate itself prior to distribution to the heirs. Thus, the heirs themselves do not pay inheritance taxes.

The value of the federal taxable estate is determined by deducting from the value of the gross estate the amount of all bequests, legacies, devises, or transfers to or for the use of the United States or state for exclusively public purposes. Therefore, if an easement has been granted during the donor's lifetime, only the restricted (lower) value of the property already under easement is included in the owner's estate, resulting in a lower estate tax than if no easement existed. If the easement is granted by will, the donor's estate may claim a charitable deduction for the value of the easement, thus reducing the estate tax in either case.

## SPECIAL ESTATE TAX REDUCTION FROM THE TAXPAYER RELIEF ACT OF 1997

In addition to the reductions in taxable estate described above, there is a special additional estate tax reduction due to some, but not all conservation easements. These benefits were implemented under the Taxpayer Relief Act of 1997 (*26 U.S.C. §2031(c)*). This

law allows an executor to exclude 40% of the value of the land subject to the conservation easement from an estate up to \$50,000. This reduction, which applies only to donated conservation easements, was phased in beginning in 1998.

To receive this exclusion, the conservation easement must be perpetual and must qualify for one of three conservation purposes:

- preservation of land for outdoor recreation by or education of the general public;
- protection of relatively natural habitat for fish, wildlife, plants; or similar ecosystems; or
- preservation of open spaces where preservation is for the scenic enjoyment of the general public or pursuant to a federal, state, or local governmental conservation policy.

Unlike the income tax deduction, this special estate tax reduction does not recognize an easement with an historic land area or “certified historical building” as a qualified conservation purpose.

A second requirement under this section is that the terms of the conservation easement limitation must include a prohibition on the use of the property for more than minimal commercial recreational activity. Thus, land used for theme parks, golf courses, dude ranches and the like, will not qualify for this tax benefit. However, hunting and fishing leases will not generally result in disqualification under this section.

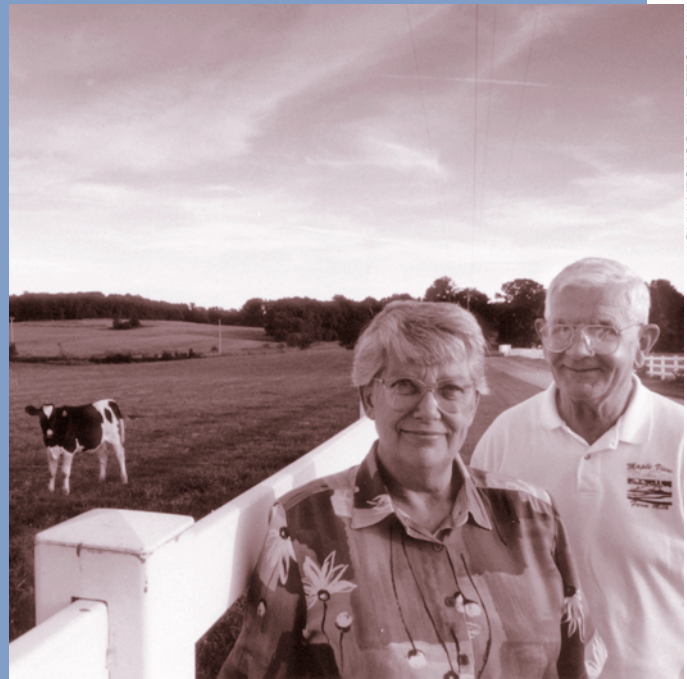
Finally, a qualified conservation easement must be made by the decedent, a member of the decedent’s family, or the executor of the decedent’s estate. A partnership, corporation, or trust can also be eligible for the exclusion if the decedent owned at least 30% of the property.

## STATE ESTATE TAXES

In North Carolina, an estate tax is similarly imposed on the estate of a decedent when a federal estate tax is imposed on the estate and any of the following apply:

- the decedent was a resident of North Carolina at death; or
- the decedent was not a resident at death and owned real property or tangible personal property or intangible personal property.

However, at this time, the federal estate tax is not triggered unless a \$1 million threshold is met. In contrast, North Carolina “tied” its estate tax into the older federal tax threshold effective as of January 1, 2001, with the result being that North Carolina currently has a threshold of \$750,000 and the state and federal estate tax thresholds are disparate. This state threshold figure will increase annually until 2006 under current state laws.



## maple view farm

Chris Nutter remembers one developer who approached her husband and her a few years ago about purchasing their land in rural Orange County. “He made the mistake of saying to us, ‘Wouldn’t it be wonderful to sit here on your front porch and see all the beautiful houses?’” Nutter said.

“We looked at him rather blankly, I’m sure, and we said, ‘No, we like what we see now.’”

The Nutters have ensured that other people will see the same bucolic scene they enjoy by donating two conservation easements to Triangle Land Conservancy. The first phase of the easement, 107 acres donated in 1995, protects portions of the working dairy farm. The second phase, 81 acres donated in 2001, protects woodland that is part of Pickard’s Mountain, the most important Natural Heritage Program site in Orange County, which includes several properties protected by easements.

“I don’t know what will happen to it in the future, but they’ll never build houses on it,” Bob Nutter said about the 188 acres of Maple View Farm now protected by conservation easement.

The Nutter’s decision was based on their desires to preserve open space, retain their land for farm uses, and lower estate taxes. Without the easements, Bob Nutter believes his heirs would have had no choice but to sell the land to cover the estate taxes. The easements will lower estate taxes because the land has been devalued. The Nutters donated the easements in phases to take maximum advantage of federal and state tax incentives for conservation.

## FEDERAL GIFT TAXES

The federal government generally imposes a gift tax on any transfer of property by gift for which the donor did not receive equivalent consideration in return. Equivalent consideration is defined as an equivalent in money or “money’s worth.” However, not every gratuitous transfer of property will result in the donor incurring gift tax liability because a donor can transfer a specified amount each year that is free of gift tax. Additionally, the federal government provides a special rule for irrevocable transfers of easements in that it allows a deduction for any transfer of a qualified property interest that meets the requirements of IRC Sec. 170(h). Thus, the taxpayer will be eligible for a deduction for making the gift and a federal gift tax will not be imposed on the conveyance of the conservation easement.

## STATE GIFT TAXES

State gift taxes are imposed upon and paid by donors or donees for property that is transferred during the lifetime of the donor. In North Carolina, the gift tax exempts transfers to spouses and to charitable organizations (both within and outside the state of North Carolina).

## PROPERTY TAXES

Conservation and historic preservation easements do not remove land or historic properties from the property tax rolls, but they can reduce the amount of property taxes paid. North Carolina law requires that land and improvements subject to conservation easements or historic preservation agreements be assessed at its actual value. Actual value is defined as the true value of the land and improvements less any reduction in value caused by the easement. The test for the true value of the property is to determine the market value of the property prior to the granting of the easement and then reduce that value by applying a damage factor caused by the granting of the easement. County tax assessors should be notified after an easement is granted so that property taxes may be reassessed.

Property owners who elect to place a conservation easement on their land will gain the greatest local tax relief by restricting development in perpetuity. If a perpetual conservation easement reduces most of the development potential, the land will usually be assessed at the lowest levels. (Of course, if the property is already assessed at the lowest level, no further reduction can be expected.) If the conservation easement does not restrict the property more than existing zoning or subdivision restrictions, then there will be minimal property tax advantages as a result of the conservation easement.

Real property designated as an historic structure, site, or landmark by a local ordinance or recognized by the state is

designated as a special class of property and is taxed on the basis of 50% of the true value of the property. (*N.C.G.S. Sec. 105-278*)

## DONATING AN EASEMENT BY WILL

If an easement is donated by will, it has the same effect on estate taxes as a lifetime donation. The donor should be sure to negotiate the easement with the prospective grantee before including it in his or her will, in order to ensure that the organization is willing and able to receive the donation and that the easement achieves the donor’s intent.

Under North Carolina tax law, a transfer of full fee title to land or a partial interest in land (such as an easement) to a qualified charity is a tax-exempt transfer. Land removed from an estate in this manner lowers the overall taxable value of the estate.

# Tax Advantages for Corporations and Real Estate Developers

Easements and other qualified charitable contributions are most appealing to individuals or families who are committed to the conservation of their land or preservation of significant historic resources and who can use the substantial income and estate tax savings that flow from the donation of long-term capital gain property. While charitable deductions for corporate landowners and for real estate developers (whether individual or corporate) are also available, there are different limitations and several potential pitfalls that should be identified.

Corporations such as those with stock that is publicly traded are subject to tax rates, deductions, and other applicable provisions different from those applied to individuals. The rules are contained in Chapter “C” of the Internal Revenue Code. The discussion following pertains to ‘C’ corporations (known simply as corporations) and is intended only as a brief overview. Any potential land transaction should be analyzed by the corporation’s tax and financial counsel to determine the benefits to the company. [See below for other types of entities, such as Sub-chapter ‘S’ corporations, partnerships, trusts, and limited liability companies.]

## FEDERAL CORPORATE INCOME TAX DEDUCTION

### Long-Term Capital Gain Property

A corporate donor of a qualified conservation or historic preservation easement on long-term capital gain property may deduct the fair market value of the easement as a charitable contribution for federal income tax purposes. However, the maximum amount deductible is 10% of net corporate income in

the year of the gift. As with individual taxpayers, the corporate taxpayer may “carry over” any unused portion of the donation for each of five succeeding years and deduct the same percentage in each of those years (26 U.S.C. 170(b)).

### Short-Term Capital Gain and Ordinary Income Property

If the land is classified as ordinary income property or short-term capital gain property, the contribution is limited to the adjusted basis of the property. No deduction for unrealized appreciation is allowed. Thus, a real estate developer, who sells land in the regular course of business, and whose real estate is therefore frequently booked not as a capital asset, but an ordinary income asset, may not be able to use the fair market value of the property as the measure of the deduction. This rule may not be a problem if the developer recently purchased the property at a high value because its basis will be accordingly high. However, a developer with property acquired at a low basis may find a considerable gap between basis and fair market value in the course of preparing for subdivision, development, and marketing.

The test under federal tax law as to whether a tract of land is ordinary income property hinges on the determination of whether the property is held by the taxpayer “primarily for sale to customers in the ordinary course of his trade or business.” Among the factors considered in applying the test are: (1) *the frequency and substantiality of sales*, (2) *the extent of development activity and improvements*, and (3) *solicitation and advertising efforts by the taxpayer*.

If the problem is simply that the land is classified as short-term capital gain property, there is a simple remedy for turning it into long-term capital gain property. That is, the donor can hold the property for the requisite period so as to qualify for long-term capital gains treatment.

If the land is categorized as ordinary income property or short-term capital gain property, the basis can be deducted up to a limit of 10% of net corporate income for corporations and 50% of adjusted gross income for individuals and is subject to the five-year carryover provision.

### STATE CORPORATE INCOME TAX CREDIT

A corporate donor of an easement made for conservation purposes to a qualified grantee may claim the special conservation income tax credit equal to 25% of the fair market value of the easement, up to a maximum of \$500,000 (N.C.G.S. §105-130.34). The rules regarding carryovers, certification by the N.C. Department of Environment and Natural Resources, and as otherwise explained above for individual taxpayers claiming this credit are also applicable to corporate taxpayers.

## town creek

Town Creek is one of Brunswick County’s best-kept secrets and one of the North Carolina Coastal Land Trust’s highest conservation priorities. Town Creek is only a stone’s throw from bustling Wilmington, yet paddling down this tranquil blackwater stream can transport you to an earlier, more unhurried, time. The waterway originates in the vast Green Swamp and flows eastward until it reaches the western banks of the Cape Fear River opposite Wilmington. Town Creek flows through a relatively undeveloped landscape, and its marshes, swamp forests, and upland bluffs are mostly unspoiled. Considered a nationally significant natural heritage site by the state, Town Creek is believed to contain the best remaining examples of the lower Cape Fear River’s original freshwater fauna.

To help conserve this wild and wonderful place, the Coastal Land Trust launched its Town Creek/Lower Cape Fear Initiative with the goal of protecting a corridor from the headwaters of Town Creek to its mouth at the Cape Fear, then southward all the way to Southport. In 1998 and 1999, the Coastal Land Trust secured donated conservation easements on more than 3,000 acres along Town Creek at two antebellum plantations. In December 2000, the land trust received donated conservation easements on a 2,900-acre parcel on the Lower Cape Fear River and a 45-acre tract at Town Creek. Most recently, the Coastal Land Trust, in cooperation with the state Division of Forest Resources, purchased conservation easements and development rights on 2,500 acres at Town Creek owned by International Paper. More than 8,500 acres in the focus area are now protected, and other tracts are on line for future acquisition.



JANICE ALLEN



## DONATIVE INTENT

The tax code pertaining to charitable deductions defines a qualified contribution as “a contribution or gift to or for use of”:

- a state or other government unit (but only if made exclusively for public purposes); or
- a qualified charity (26 U.S.C. §170(c)).

Even if the IRS agrees that a contribution of property within a development is a capital asset, a potential donation may not qualify as a charitable contribution unless the taxpayer can demonstrate the requisite donative intent. That is, the contribution may not be made primarily with non-charitable motives such as compliance with legal requirements or “the incentive of anticipated benefits of an economic nature” (to gain approval for subdivision, rezoning, a wetlands disturbance permit, etc.). If the IRS determines the taxpayer did not have the required donative intent, the income tax deduction for a charitable gift will not be allowed. Likewise, tax deductions are not allowed for a corporate donation made in response to government requirements for reserving open space land in a development project.

*(Note: This requirement of donative intent applies to all property donations, not just conservation and historic preservation easements.)*

## Other Entities: Partnerships, Trusts, Limited Liability Companies, and ‘S’ Corporations

The federal and state tax incentives for donations of easements by entities other than individuals and ‘C’ corporations should be carefully researched by the prospective donor prior to making a gift.

In general, a donation by a partnership “flows through” to the individual partners, who then may claim deductions and credits on their respective individual returns. However, changes enacted by the General Assembly in 2001 modify the North Carolina tax credit as it applies to partnership gifts. Under current law, each partner is able to claim the maximum credit allowed (\$250,000). Under the new law, which takes place January 1, 2005, the credit is applied as though only one gift is made rather than many; that is, the partnership is limited to one credit of \$250,000, which may be allocated among the partners.

The word “trust” encompasses a variety of legal entities and may be treated as true trusts, in which case they are governed by an entirely separate section of the Internal Revenue Code, or as partnerships or corporations. Some trusts are treated for tax purposes as a fiction, and the grantor or owner of the trust is taxed as though there were no other legal entity involved at all.

A limited liability company may be treated as a partnership or a corporation for tax purposes, depending on its organizing documents. A ‘Subchapter S’ corporation, in general, is treated as a partnership for federal tax purposes. However, the particular facts and circumstances of each entity will dictate the tax effect of a donation of a conservation easement.

Any of the special entities described above should receive the advice of its own advisors before proceeding with any easement transaction.

## long ridge farm

HIGH COUNTRY CONSERVANCY



His great, great grandparents came to Watauga County nearly 200 years ago. They loved the mountains where they lived and worked. The country seemed like paradise.

But in the last thirty years, Jim and Mary Neal Henson have seen paradise under assault from rampant development. They didn’t want that to be the fate of Long Ridge Farms in historic Valle Crucis. Knowing that fragmenting the forest could harm the migratory birds that inhabit the Blue Ridge Mountains, the Hensons wanted to ensure that their 130 acres (110 of it wooded) would remain a bird haven.

After meeting with the High Country Conservancy, the Hensons agreed to a conservation easement, which allows the Hensons to maintain their life on the farm while forever prohibiting all new construction, timber harvesting, and road building.

Jim Henson says, “In order to keep these mountains beautiful and to maintain a certain quality of life, there must be some land-use restrictions. The people who work with the High Country Conservancy have been very helpful with the intricacies that were involved in our easement.” Thanks to the Hensons for preserving a vital piece of our mountain heritage.



IDA PHILLIPS LYNCH



## colee mee plantation

When the house at Colee mee Plantation was built between 1853 and 1855, it represented a departure from any prior architecture in North Carolina's Piedmont. Designed by New York architect W. H. Ranlett, the house stands 50 feet high and includes 12 rooms and 3 porches. The house and surrounding land will remain a legacy to the people of North Carolina because of a family's generosity and the work of a land trust.

Colee mee Plantation is a 1,900-acre farm along the Yadkin River in Davie County that has been in the Hairston family since 1817. In 1997 the Peter W. Hairston family donated a conservation easement on the plantation to the LandTrust for Central North Carolina. This was the largest conservation easement ever donated by a private landowner in the Piedmont. Listed as a National Historic Landmark because of its rich history and a National Natural Landmark because of a rare stone outcropping, Colee mee Plantation has been the subject of books, television programs, and countless newspaper and magazine articles. The easement limits development on the property, protects a 2,000-foot corridor along approximately 2 miles of the Yadkin River, and provides protection for the house. Ownership of the house and the land will remain in the Hairston family, but the property's uses will be limited to protect its conservation value.

Colee mee was facing tremendous development pressure from urban development approximately 15 miles north of the plantation. The Hairston family felt that the best way to show their appreciation for the land was to limit development on it. Because they will continue to allow traditional uses of the land, such as farming, Colee mee will not only remain as a historical plantation, but as a remnant of the Piedmont's working landscape for future generations to study and enjoy.



## chapter three finding the right partner

### North Carolina Agencies and Organizations to Assist with Conservation and Historic Preservation Easements

**A** number of agencies and organizations that are active in North Carolina, including those listed here, can provide more information about options for protecting historic properties or natural and rural lands. These groups can help you devise a conservation plan that makes the most sense for you and introduce you to attorneys, appraisers, accountants, and planners who are familiar with conservation and preservation strategies.

The interest of the potential recipient organization in your property will depend on its own evaluation criteria and priorities. The recipient organization will incur costs in entering a conservation or historic preservation easement and in long-term monitoring, and must judge whether a permanent relationship with the property will, on balance, further its mission and program goals.

Before entering into an agreement with the potential recipient of your gift, you should request a copy of the IRS certification proving the organization's tax-exempt charitable and property holding status. In addition, the deed of easement should include provisions for the easement to pass to another recipient if the first grantee fails to enforce the terms or ceases to exist.

The easement (conservation or historic preservation) is just one of several options available to private owners who seek to protect important natural or historic properties. Decisions affecting the ownership and future use of property should be made only after careful consideration and consultation with competent, experienced legal and tax advisors.

## NATIONAL AND STATEWIDE LAND CONSERVATION AGENCIES AND ORGANIZATIONS WITH OFFICES IN NORTH CAROLINA

### Land Trust Alliance

#### Southeast Regional Program

P.O. Box 33355

Raleigh, NC 27636-3355

919-424-4427

[www.lta.org](http://www.lta.org)

Founded in 1982, the Land Trust Alliance promotes voluntary land conservation across the country, provides resources, leadership, and training to the nation's 1,200-plus nonprofit, grassroots land trusts, and helps them to protect important open spaces.

### Conservation Trust for North Carolina

P.O. Box 33333

Raleigh, NC 27636

919-828-4199

[www.ctnc.org](http://www.ctnc.org)

This statewide land trust is dedicated to enriching and preserving North Carolina's natural and cultural heritage and can help connect you with one of the growing number of local and regional land trusts now organizing across North Carolina. These private, nonprofit trusts are devoted to protecting natural, recreational, and undeveloped lands of greatest value to community environmental quality. The Conservation Trust can also arrange land use design and planning assistance for landowners and communities.

### The Nature Conservancy

#### North Carolina Chapter

4705 University Drive, Suite 290

Durham, NC 27707

919-403-8558

<http://nature.org/northcarolina>

The Nature Conservancy is an international, nonprofit membership organization. The Nature Conservancy's mission is to preserve the plants, animals, and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. The North Carolina Chapter has protected more than 561,000 acres in the state.

### Trust for Public Land

#### Charlotte Office

1200 E. Morehead Street, Suite 290

Charlotte, NC 28204

704-376-1839

[www.tpl.org](http://www.tpl.org)

Founded in 1972, the Trust for Public Land works to protect land for human enjoyment and well-being. TPL helps conserve land for recreation and spiritual nourishment and to improve the health and quality of life of American communities.

### The Conservation Fund

#### North Carolina Office

P.O. Box 271

Chapel Hill, NC 27514

919-967-2223

[www.conservationfund.org](http://www.conservationfund.org)

The Conservation Fund is a non-membership, non-advocacy conservation nonprofit organization. Since 1985, the Fund and its partners have protected more than 3.4 million acres of wildlife habitat and watersheds, working landscapes, and community open-space.

### American Farmland Trust

1200 18th Street NW

Washington, DC 20036

202-331-7300

[www.farmland.org](http://www.farmland.org)

Since its founding in 1980, American Farmland Trust has helped protect over a million acres of American farmland. The organization unites farmers, environmentalists and policymakers to protect land through publicly funded agricultural conservation easement programs; plan for growth with agriculture in mind through effective community planning and growth management; and keep farmland healthy by encouraging stewardship and conservation practices.



IDA PHILLIPS LYNCH

## NATIONAL AND STATEWIDE LAND CONSERVATION AGENCIES AND ORGANIZATIONS WITH OFFICES IN NORTH CAROLINA

### North Carolina Department of Environment and Natural Resources

(NCDENR)

1601 Mail Service Center

Raleigh, NC 27699-1601

919-733-4984

[www.enr.state.nc.us](http://www.enr.state.nc.us)

The N.C. Department of Environment and Natural Resources (DENR) is the lead stewardship agency for the preservation and protection of North Carolina's outstanding natural resources. The organization administers regulatory programs designed to protect air quality, water quality, and the public's health. DENR also offers technical assistance to businesses, farmers, local governments, and the public, and encourages responsible behavior with respect to the environment through education programs. Through its natural resource divisions, DENR works to protect fish, wildlife, and wilderness areas.

### North Carolina Natural Heritage Program

Office of Conservation and Community Affairs

Mailing address: 1601 MSC, Raleigh, NC 27699-1601

Street address: 512 North Salisbury St., Raleigh, NC 27604-1184

919-715-4195

[www.ils.unc.edu/parkproject/nhp](http://www.ils.unc.edu/parkproject/nhp)

The Natural Heritage program inventories, catalogues, and facilitates protection of the rarest and most outstanding elements of the natural diversity of North Carolina. These elements of natural diversity include those plants and animals that are so rare or the natural communities that are so significant that they merit special consideration as land-use decisions are made. The program provides information to owners of priority natural areas about the ecological significance of their properties and options for preservation.

### N.C. Wildlife Resources Commission

1722 Mail Service Center

Raleigh, NC 27699-1722

919-733-7291

[www.ncwildlife.org](http://www.ncwildlife.org)

The mission of the N.C. Wildlife Resources Commission is to manage the state's fish and wildlife resources and conservation areas. Wildlife Commission game lands are open for a variety of recreational activities, including hunting, fishing, and hiking. The Commission owns some of these lands, leases others from private owners, and can accept gifts of land.

### N.C. Conservation Tax Credit Program

Department of Environment and Natural Resources

1601 Mail Service Center

Raleigh, NC 27699-1601

919-715-4191

[www.enr.state.nc.us/conservationtaxcredit](http://www.enr.state.nc.us/conservationtaxcredit)

This program can provide information about the state's unique tax credit incentive program to assist landowners in protecting North Carolina's environment. A credit is allowed against individual and corporate income taxes when real property is donated for conservation purposes. Interests in property that promote specific public benefits may be donated to a qualified recipient. Such conservation donations qualify for a substantial tax credit.

## NATIONAL AND STATE HISTORIC PRESERVATION AGENCIES AND ORGANIZATIONS WITH OFFICES IN NORTH CAROLINA

### National Trust for Historic Preservation

1785 Massachusetts Ave., NW  
Washington, DC 20036-2117  
202-588-6000

[www.nationaltrust.org](http://www.nationaltrust.org)

The National Trust for Historic Preservation is a privately funded nonprofit organization that provides leadership, education and advocacy to save America's diverse historic places and revitalize our communities.

### Preservation North Carolina

(Historic Preservation Foundation of North Carolina, Inc.)  
P.O. Box 27644  
Raleigh, NC 27611-7644  
919-832-3652

[www.presnc.org](http://www.presnc.org)

Founded in 1939, Preservation North Carolina is North Carolina's only private nonprofit statewide historic preservation organization. Its mission is to protect and promote buildings, landscapes and sites important to the heritage of North Carolina. The foundation identifies and purchases threatened historic properties and resells them under protective covenants. The Foundation also accepts historic preservation easements.

### State Historic Preservation Office

Division of Archives and History  
N.C. Department of Cultural Resources  
4610 Mail Service Center  
Raleigh, NC 27699-4610  
919-733-7305

[www.hpo.dcr.state.nc.us](http://www.hpo.dcr.state.nc.us)

The State Historic Preservation Office (HPO) assists private citizens, private groups, and local governments in the identification, evaluation, protection, and enhancement of properties significant in North Carolina history and archaeology. The agency is responsible for the statewide survey of historic buildings and archaeological sites and the nomination of eligible properties to the National Register of Historic Places. The HPO can help property owners arrange preservation agreements and put them in touch with local historic preservation commissions.

## PRIVATE LOCAL ORGANIZATIONS & PUBLIC AGENCIES

### Local and Regional Land Trusts

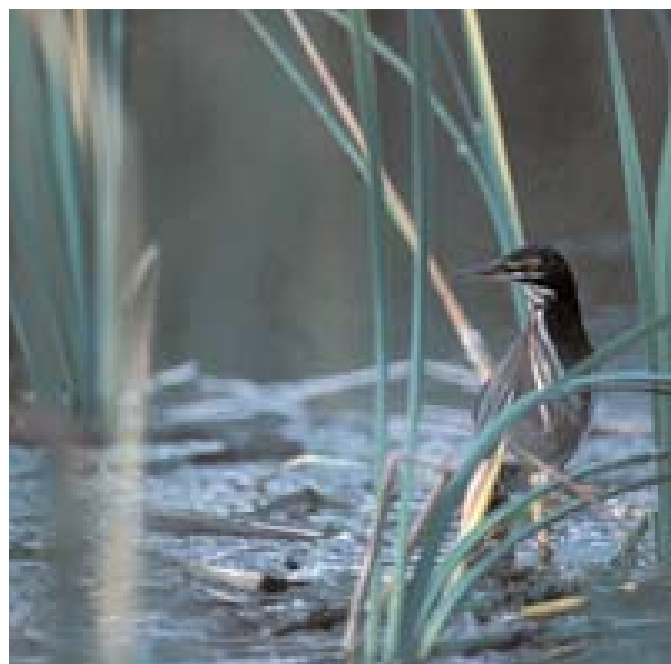
A growing number of local and regional private, nonprofit land trusts are organizing across North Carolina. Incorporated as public-interest charities, these organizations are tax-exempt and work to protect natural areas, open space lands, and, frequently, historic sites of value to the communities they serve. The Conservation Trust for North Carolina listed above can supply information on land trusts in your area and their website contains contact information for land trusts throughout North Carolina.

### Local Historical Organizations

Many North Carolina communities have local preservation or historical organizations (both public and private) that are qualified to accept and administer historic preservation easements. Contact Preservation North Carolina listed above for information on organizations in your area.

### Local Public Agencies

Conservation and historic preservation easements may be conveyed to counties, municipalities, local park districts, soil and water conservation districts, and other agencies of local and state government.



MELISSA MCGAW



## appendix a

# options for donating conservation lands or historic properties

Although conservation and historic preservation easements may be created by donation, sale, bargain sale by the landowner, or some combination of these methods, it is important to first examine the various options available for the donation of conservation lands or historic properties because many of the same rules apply for the donation of a conservation or historic preservation easement.

### FULL DONATION OF PROPERTY

Donations of property in full fee title often are preferred by public agencies and conservation and preservation groups. The tax savings gained by the donor from the gift of property are greater than those available through conservation or historic preservation easements. The gift also serves as a permanent memorial to the donor. Donating land for conservation purposes or historic properties for preservation is truly one of the finest legacies a person can leave to future generations.

Outright donations may be the best strategy for donors who:

- do not wish to pass the property on to heirs;
- no longer use the property;
- have substantial real estate holdings and wish to reduce estate tax burdens; and
- would like to be relieved of management and maintenance responsibility for the property.

An outright donation to a public agency or willing private nonprofit corporation — such as a land trust or historic preservation organization — releases the donor from future management responsibilities and can provide substantial income tax deductions and estate tax benefits (while avoiding capital gains taxes that would result from selling the property).

Depending upon the character of the land or historic site and

the desires of the owner, donated property can be established permanently as a nature sanctuary or wildlife refuge, scientific reserve, historic landmark, or archaeological preserve where some specific types of public access may be allowed.

To assure that the land or historic property is protected in perpetuity, an owner may donate fee or full title to the property to one organization and a conservation easement to a second group. (Putting restrictions in a deed to a single group decreases the value of the donation.)

### BARGAIN SALE OF PROPERTY

An owner who must realize immediate income from land or buildings, but would like the property to be protected, might successfully employ a bargain sale. In a bargain sale, property is sold to a public agency or private conservation organization for less than its fair market value. A bargain sale combines the income-producing benefit of a sale with the tax-reducing benefits of a donation. Benefits to the seller include receiving immediate cash, avoiding some capital gains tax, and entitlement to a charitable income tax deduction based on the difference between the property's fair market value and its sale price.

### DONATING PROPERTY BY WILL

Donors who wish to own and continue to control their property during their lifetimes, but want to assure its protection after death, can donate it by will. Donors should ensure that the selected recipient is willing and able to accept the gift. This arrangement will reduce estate taxes owed upon the donor's death but will not reduce income taxes or property taxes.

## appendix b

# statutory authority for conservation and historic preservation easements

### **HISTORIC PRESERVATION AND CONSERVATION AGREEMENTS ACT**

#### **(N.C. General Statutes §121-34 et. seq.)**

North Carolina was one of the earlier states to adopt an “enabling act” that overcame problems of common law as applied to easements. The statute provides that conservation agreements may be in the form of “a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument . . . appropriate to retaining land and water areas predominantly in their natural, scenic or open condition . . .” It authorizes acquisition of conservation easements by state agencies, counties, municipalities, districts, or public corporations, or by corporations or trusts whose purposes include conservation and preservation. The statute does not expressly authorize the federal government to hold easements and probably should be amended in that regard.

The statute overcomes the disabilities of common property law that would otherwise have made easements unenforceable by a grantee against successors in the title of a grantor, by declaring that such agreements shall not be unenforceable “because of lack of privity of estate or contract, lack of benefit to particular land or persons or because the benefit has been assigned.”

Under North Carolina law, a conservation easement may be created for a period of years or it may be perpetual. (Note: The “Rule Against Perpetuities,” which may void certain conditions in some estates in lands that are subject to a future executory interest, is not applicable to conservation easements because they are present, vested interests in land. The state Marketable Record Title Act, N.C.G.S. 47B-3(8)(c), provides an exception for conservation easements.)

In addition to the state’s general conservation easement enabling statute, there are other state laws that authorize the use of conservation easements for special programs.

### **NATURE PRESERVES ACT**

#### **(N.C.G.S. §113A-164.1 et. seq.)**

Authorizes the State of North Carolina to accept “Articles of Dedication” over real property interests, including conservation easements, to be held in trust for the benefit of the people of the state. Eligibility is determined by the N.C. Natural Heritage Program. Land dedicated as a nature preserve may not thereafter

be damaged or used for any purpose other than for preservation of its ecologically significant resources without a finding by the Governor and Council of State that the other use or disposition is in the best interest of the State. Thus, private lands dedicated under this statute are sometimes referred to as “condemnation-proof.” While not entirely true, dedication does provide some measure of protection against, for example, a local or right-of-way condemnation. Nature preserve dedication is often called the “highest form of insurance” to assure the long-term protection of special natural areas.

### **NATURAL AND SCENIC RIVERS ACT OF 1971**

#### **(N.C.G.S. §113A-30 et. seq.)**

Institutes a North Carolina natural and scenic rivers system and prescribes methods for including components to the system in the future. The Act authorizes the state to acquire scenic easements within the boundaries of a river or segment of river. The contribution or donation of a scenic easement will be considered a contribution to the state of North Carolina.

### **NORTH CAROLINA TRAILS SYSTEM ACT**

#### **(N.C.G.S. §113A-83 et. seq.)**

Institutes a state system of scenic and recreation trails of already-existing and future trail segments and systems and prescribes the methods by which future trails may be added. The Act authorizes acquisition by the state of scenic easements over the state trail system. These easements over private lands will become part of the state trail system. In 1993, the Act was amended to protect owners of private lands in the trails system by limiting their liability to the public; such private owners owe only the duty of care owed to a trespasser to the public.

### **PRESERVATION OF FARMLAND ACT**

#### **(N.C.G.S. §106-744 et. seq.)**

Authorizes counties to purchase agricultural conservation easements over qualifying farmland within agricultural districts and established a North Carolina Farmland Preservation Trust Fund, the funds of which are to be used to allow counties and private nonprofit conservation organizations to purchase and maintain such easements.



## **PRESERVATION, ETC. OF SCENIC BEAUTY OF AREAS ALONG HIGHWAYS**

**(N.C.G.S. §136-122 et. seq.)**

Authorizes the Department of Transportation to accept fee simple title or partial interests to preserve and enhance natural or scenic beauty to promote the enjoyment of travel. The statute also authorizes the Department of Transportation to control and direct the Litter Prevention Account to reduce litter in North Carolina.

## **“NORTH CAROLINA ENVIRONMENTAL BILL OF RIGHTS”**

Ratified as an amendment to the State Constitution by North Carolinians in a popular referendum in 1972. Article XIV, Section 5, of the Constitution of North Carolina declares State policy “to conserve and protect its lands and waters for the benefit of all its citizenry” and “to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, open lands, and places of beauty.” The Constitutional amendment and subsequently the State Nature and Historic Preservation Dedication Act of 1973 authorized the state and local governments to acquire properties or interests in properties to become part of the “State Nature and Historic Preserves” system when accepted by legislative resolution.

## **CLEAN WATER MANAGEMENT TRUST FUND (N.C.G.S. §113-145.1-145.8)**

The Clean Water Management Trust Fund was enacted in 1996, and became effective on June 30, 1996. The Fund was created in recognition of the critical need to clean up pollution in the State’s surface waters and to protect and conserve those waters that are not yet polluted. The Fund’s focus is on the cleanup and prevention of pollution of the State’s surface waters. This Fund has

been instrumental in helping to finance projects that address water pollution problems and focus on upgrading surface waters, eliminating pollution, and protecting and conserving unpolluted surface waters. The Fund is also used to build a network of riparian buffers and greenways for environmental, educational, and recreational benefits.

## **CONSERVATION EASEMENTS PROGRAM (N.C.G.S. §113A-230 et seq.)**

Intended to extend the ability of the Department of Environment and Natural Resources to strengthen the capability of private nonprofit land trusts to participate in land and water conservation. The Article allows the DENR to develop a nonregulatory program that uses conservation tax credits to accomplish conservation purposes.

## **MILLION ACRE PLAN FOR NORTH CAROLINA (N.C.G.S. §113A-241)**

In 2000, James B. Hunt, Jr., then Governor of North Carolina, made his million-acre challenge to the North Carolina Smart Growth Commission. The challenge was issued to the Department of Environment and Natural Resources to provide Governor Hunt with a plan for how North Carolina could permanently set aside an additional million acres of land over a ten-year period. The General Assembly subsequently passed a statute that stated that “The State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space, and conservation lands in the State are permanently protected by December 31, 2009.”



MELISSA MCGAW



## appendix c

# glossary

**adjusted gross income (AGI)** - For income tax purposes, gross income minus certain deductions and expenses.

**agricultural conservation easement** - A conservation easement prohibiting development practices that damage productivity or agricultural value of farmland.

**appreciation** - The increase in value that generally accrues to property over time.

**appraisal** - An estimated value set on property by a qualified appraiser (as defined by the Internal Revenue Service).

**assessment** - The valuation of property for property tax purposes in order to apportion a tax on it, according to its value or in relation to the benefit received from it.

**bargain sale** - The sale of property to a charitable and tax-exempt organization for less than its fair market value.

**basis** - The cost of property at the time of acquisition, or value when inherited, plus the cost of certain permanent capital improvements.

**capital gain** - Profit from the sale of property in excess of its basis.

**charitable gift** - A contribution or gift made to a state or other government unit or to a qualified charity.

**conservation easement** - A legal agreement between a landowner and a conservation organization or government agency that permanently limits a property's conservation values. Called a "conservation restriction" in some states; also may be called an agricultural preservation easement, historic preservation easement, or forever wild easement, etc., depending on the resources it protects.

**covenant (or restriction)** - A written promise contained in a contract, lease, deed, or other form of agreement.

**cultural resource** - Archaeological sites, historic properties, etc., and their surroundings.

**deed restriction** - (See "covenant")

**devise** - (v.) To give or transmit real estate by will. (n.) A gift of real estate by will.

**donative intent** - The contribution of a gift with charitable motives and without the incentive of anticipated benefits of an economic nature.

**donee** - One who receives a donation. Also a grantee or recipient.

**donor** - One who makes a donation. Also a grantor.

**easement** - A right that one has in or over the land of another. Easements can be made to accommodate utilities, access, and conservation or preservation purposes, among others.

**estate** - The property and possessions of a deceased person.

**estate tax** - Tax on certain assets that have been transferred from a deceased person to his or her heirs. Also called death tax or inheritance tax.

**fair market value** - The price that a willing buyer would pay a willing seller, neither being under any compulsion to buy or sell and both having full knowledge of relevant facts surrounding the transaction.

**fee simple (full) interest** - Absolute ownership of property. (Ownership of "less than fee simple interest" in property is ownership of fewer than the total possible rights one may have in land. When a landowner grants a conservation easement to a land trust, the land trust owns less than fee simple interest.)

**gift tax** - State tax imposed upon and paid by donors or donees for property transferred during the lifetime of the donor.

**grantee** - (See "donee")

**grantor** - (See "donor")

**historic preservation easement** - (See “conservation easement”)

**historic rehabilitation tax credit** - Federal and state tax credits available to owners who rehabilitate residential or commercial income-producing historic properties.

**inheritance tax** - (See “estate tax”)

**interest in property** - A right or share in the ownership of property. See also “partial interest.”

**land trust** - Nonprofit organization that protects land directly, usually by helping landowners establish a conservation easement, accepting donations of property and easements, or buying land. Sometimes called a “conservancy.”

**life estate** - (See “reserved life estate”)

**partial interest** - A portion of the ownership rights in property. (See “fee simple interest” and “interest in property”)

**(in) perpetuity** - Forever.

**preservation easement** - A legal agreement between a landowner and a conservation organization or governmental agency that permanently limits the types of alterations that may be made to historic structures to protect the architectural and historical integrity of structures.

**qualified donee** - A certified, tax-exempt charitable organization or agency as approved by the Internal Revenue Service.

**real property, real estate or realty** - Land and generally permanent improvements erected on it and that which is growing upon or affixed to land.

**remainder interest** - An interest in property that does not become the possession of the property until the completion of a prior interest; for example, where a grantor deeds property to an organization subject to a “reserved life estate,” the organization has a remainder interest which will become possessory when the life tenant dies.

**reserved life estate** - The right retained by the owner or other named individuals to live on or use property.

**stewardship** - The management and care of property, particularly natural and historic sites.

**term easement** - An easement on property made for a specified period of time, not in perpetuity.

**title** - The right to or ownership of land and the evidence of ownership of land.

# laurel mill and the allen tract

In December 2000, Mr. Felix H. Allen, III of Louisburg donated a 53-acre conservation easement on a portion of his 745.9-acre property on Sandy Creek in Franklin County to the North Carolina Coastal Land Trust, as part of its Upper Tar River Basin Project. The purposes of this conservation easement are to preserve and protect the conservation and scenic values of the property.

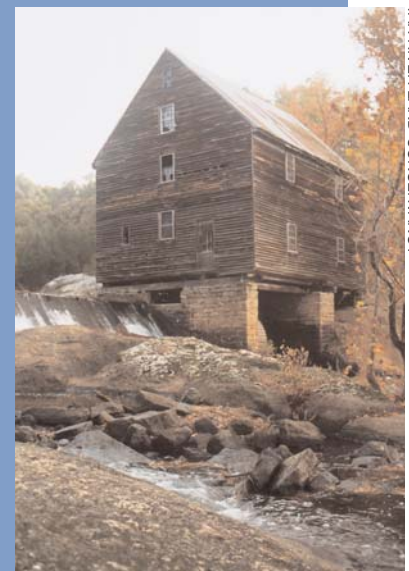
The property contains an historic millpond site, known as Laurel Mill, c. 1830. Today, only the gristmill is left standing and is protected under an historic preservation easement.

William and Margaret Holmes purchased the mill and the surrounding seven acres in 1992. In 1993, after restoring the mill, the Holmes donated a preservation easement on the property to the Historic Preservation Foundation of North Carolina, protecting the mill and its equipment from alteration or demolition. The agreement also protected the seven acres from subdivision and limits timbering and other development activity.

Beautiful rock outcrops border the millpond and some of the easternmost communities of mountain laurel are found on the north-facing outcroppings. Sandy Creek, adjacent to the property, turns into Swift Creek downstream. The Swift Creek subbasin has been identified as possibly the most significant lotic creek ecosystem remaining along the Atlantic seaboard, and is noted for its high diversity of aquatic life, particularly rare freshwater mussels.

Mr. Allen purchased 388 acres of the Sandy Creek property in 1999 from the Edwards family, who had owned the land since 1964. Prior to 1964, the Allen family had owned the property since 1878. Mr. Allen worked for many years to regain ownership of his family land. In addition to protecting the site’s natural resources, the conservation easement is part of Mr. Allen’s estate planning effort to ensure that his family will not lose the land again. The land trust assisted Mr. Allen by helping him learn about the value of conservation easements and preparing the documents needed to execute his generous donation.

The North Carolina Coastal Land Trust intends to assign the easement to the Tar River Land Conservancy.



TAR RIVER LAND CONSERVANCY