

## **NORTH CAROLINA AGRICULTURAL DEVELOPMENT & FARMLAND PRESERVATION TRUST FUND CONSERVATION EASEMENT ACQUISITION PROCEDURE**

The North Carolina Coastal Land Trust is pleased that it has been awarded a grant from the State Agricultural Development & Farmland Preservation Trust Fund (AD&FPTF) to purchase a farmland conservation easement on all or a portion of your property. Please keep in mind that this is a complex real estate transaction that **WILL** take some time. The North Carolina Coastal Land Trust does not provide either legal or tax advice to landowners and makes no representation to you as to the tax consequences of this transaction. You are advised to seek independent tax and legal counsel for all aspects of this transaction. Please provide the Coastal Land Trust with the name, address and telephone number of your attorney as soon as possible. The following are some general steps in the State farmland easement acquisition process:

- **Grant Agreement** – The Coastal Land Trust will receive a grant agreement from the State AD&FPTF acknowledging the grant award and setting out the terms and conditions for providing funding for the easement acquisition. The Coastal Land Trust is not required to undertake any due diligence activities until it has received a signed grant agreement from AD&FPTF that provides that the Coastal Land Trust will be reimbursed by the State for expenses incurred in completing due diligence activities. Receiving a grant agreement from the State may take several months from date the grant was approved.
- **Appraisal(s)**– The Coastal Land Trust will obtain a full summary report appraisal from a state certified appraiser to determine the value of the conservation easement. The State requires two appraisals if the value of the conservation easement is estimated to be over \$500,000. Please note that the Coastal Land Trust obtained a preliminary appraisal or full summary appraisal prior to submitting a grant request to the State AD&FPTF in order to calculate an estimated acquisition value. The same appraiser(s) will be used to prepare one of the required final reports. If the final full summary report comes in at a higher value than the preliminary or earlier appraisal, then the landowner will need to claim the difference as a bargain sale contribution because the approved AD&FPTF grant amount cannot be increased after the grant has been awarded.
- **Appraisal Review** - Once the appraisal(s) are completed, the Coastal Land Trust will submit them to the State for its review and approval, if required.
- **Purchase and Sale Agreement** – The Coastal Land Trust will draft a Purchase and Sale Agreement which will set forth the terms of the sale and purchase of the easement including, but not necessarily limited to, the following: the purchase price or price per acre, the description of the property which will be subject to the easement, the funding contingencies, conditions for closing and the closing date.
- **Survey** – The State requires that a survey be completed to its standards. The Coastal Land Trust will contract out the survey which will specifically identify the property that will be subject to the terms of the easement. The surveyor will be asked to mark boundaries on the ground as it is extremely helpful for future stewardship and monitoring, especially if the easement does not include the entire property.
- **Title Work** – The Grantor of the conservation easement is required to provide clear title to the property subject to the conservation easement. Thus, it is important to determine early on whether or not there are any title issues, e.g., outstanding mineral rights, liens, deeds of trust, encroachments, etc. Any outstanding mineral rights must be released prior to closing. Any lien, deed of trust or mortgage on the property must either be subordinated to the easement or paid and cancelled at closing. Any

encroachment (such as a neighbor's shed on your property) will have to be removed prior to closing or a document agreeing for it to remain must be signed, approved by the Coastal Land Trust, the State AD&FPTF, and the title insurance company and recorded at closing. Resolving these issues can take time, so identifying them up front is helpful. The Coastal Land Trust will obtain a title examination and title insurance on the easement.

- ***Drafting the Conservation Easement*** – Both the landowner (Grantor) and the Coastal Land Trust (Grantee), with assistance from their respective attorneys, negotiate the terms of the conservation easement with respect to the reserved rights and restrictions that will be placed on the property. If required, the easement may follow the State AD&FPTF's template easement. Sample easements will be provided to the landowner or the landowner's attorney upon request.
- ***Easement Documentation Report (EDR)*** – The Coastal Land Trust will prepare a report that documents the condition of the property at the time an easement is granted. This report serves as a summary of the natural features and human improvements on the property and is used in future monitoring/stewardship of the easement. Maps, photos and information are collected with the assistance of the landowner. The landowner and Coastal Land Trust must sign off on the report and retain copies for their files. A Property Certification Form is signed (by both parties) at closing. Both the landowner and land trust should keep a copy of the EDR on file.
- ***Bargain Sale Contribution or Partial Donation*** – Please note that if there is a bargain sale contribution or a conservation easement donation as part of the overall project and you are planning to claim either as a charitable contribution for federal and/or state tax purposes, it is your responsibility as a taxpayer to document the value of your contribution at the time of closing. To do so, you will need to obtain an appraisal of the conservation easement. The appraisal needs to be done either 60 days prior to the closing of the conservation easement or any time after the closing up to April 15<sup>th</sup> of the tax year in which the contribution is made. The Coastal Land Trust has an appraisal policy which will be discussed with you.
- ***State Review of Documents*** – Once the survey, conservation easement, EDR, etc. are completed, the Coastal Land Trust will submit these documents to the State for its review and approval. The State may request some modifications to the conservation easement. Once these documents are approved, the project can be closed.
- ***Closing*** - The Coastal Land Trust's attorney will work with your attorney to prepare final documents for signature and closing which includes the Settlement Statement, Attorney Opinion letter, final conservation easement, Property Certification Form, lien waiver affidavit and other such affidavits or documentation as may be required by the State and the title insurance company. The easement and survey will be recorded in the County courthouse.
- ***Stewardship*** –The Coastal Land Trust, or the entity holding the easement, will be responsible for monitoring the easement to make sure the terms and conditions are abided by in perpetuity. The Coastal Land Trust, or the entity holding the easement, has the right to enforce the terms of the easement.