

VOLUNTARY CONSERVATION AGREEMENTS

*An Introduction for
North Carolina Land Owners*



North Carolina
LAND TRUSTS
Saving the Places You Love

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North Carolina LAND TRUSTS

Saving the Places You Love

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*For current information on specific tax advantages of each type of
conservation property transaction, see the flyer in the middle of this book.
If the flyer is missing, contact the Conservation Trust for North Carolina, 919-828-4199.*

Saving the Places You Love



A conservation agreement is an effective means of protecting land in North Carolina. Conservation agreements (also called conservation easements) have been used to protect lands as varied as mountain ridgetops, Piedmont river corridors, farms, working forests and coastal marshes.

Conservation agreements enable landowners to preserve their land and maintain ownership of it while potentially realizing significant economic benefits. Landowners may sell a conservation agreement if funds are available, or they may receive tax savings for donating a conservation agreement.

This brochure is designed to answer the basic questions that a landowner might have about conservation agreements. It is not intended to provide legal advice. As with any real estate transaction, landowners should consult their personal legal, financial and tax advisors before finalizing a conservation agreement.

Contact your local land trust to discuss conservation options that may be available for your property. North Carolina's local land trusts are listed on the last page of this booklet, and further information about them and the counties they serve is available at www.ctnc.org/lmap.

What is a conservation agreement?

A conservation agreement (or conservation easement) is a written agreement between a landowner and a qualified conservation organization or public agency, in which:

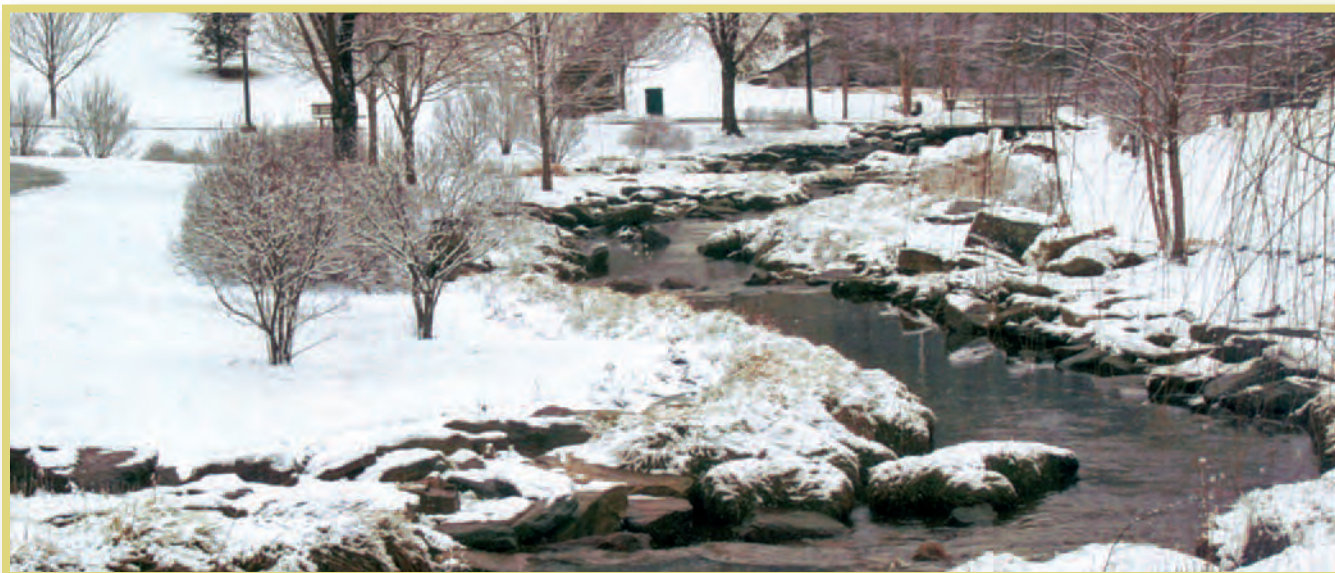
- the landowner (also called grantor or donor) promises to keep his or her land in its natural condition without extensive disturbance, and
- the conservation organization or public agency (also called grantee) has the right to monitor the property and enforce the terms of the agreement.

A conservation agreement is similar to restrictive covenants in a subdivision in that it restricts various uses of land. Each conservation agreement is voluntary and tailored to meet the needs of the landowner while protecting the property's natural assets.

There are different types of conservation agreements, and they go by different names. For example, a conservation agreement may also be referred to as a deed of conservation easement, a grant of development rights, a historic preservation agreement, a farmland agreement, a facade easement, a working forest easement, a water quality easement or an agricultural easement.

Conservation agreements are intended to preserve undeveloped property, and provide a benefit to the public by conserving open lands, forests, wildlife habitat, scenic vistas, farmland, stream banks and other significant natural resources.

Because of this public benefit, landowners who donate conservation agreements are eligible for significant federal, state and local tax incentives. In addition, grant programs exist to purchase conservation agreements from landowners who have eligible property but may not be in a position to donate an easement.





When is a conservation agreement the right method for land protection?

To begin with, the land itself must contain significant natural resources such as forestland, wildlife habitat, stream buffers or farmland, or provide scenic enjoyment from public locations so that the public will benefit from its protection.

Conservation agreements work best when:

- the landowner is motivated by the desire to conserve and preserve the land,
- the land is not heavily developed or subdivided,
- the land does not require intensive management, and
- current and future uses of the land are compatible with preservation of its natural features.

A conservation agreement is not generally a good tool for landowners who want to maximize their financial return from their land. However, if a landowner is interested in receiving either **tax benefits** (such as a federal income tax deduction, state income tax credit or a reduction in estate taxes) or a **cash payment that is less than the value of the property if it were to be developed**, then a conservation agreement may be a good option to consider.

How long does a conservation agreement last?

Under North Carolina law, a conservation agreement may be created for a period of years or it may be permanent. A landowner who wants to claim federal and state income tax benefits must agree to a permanent easement. In addition, most grant programs that provide funds for the purchase of conservation agreements require that the agreements last forever.

What restrictions are contained in a conservation agreement?

A conservation agreement's restrictions are tailored to the particular conservation values of the land and interests of the landowner and grantee. Some activities that may be prohibited or restricted include industrial use or commercial development, mineral development or exploration, subdivision, residential use, access for road or power line construction, and extensive timbering.

What current and future uses do conservation agreements allow?

Depending on the size and character of the land, conservation agreements may allow limited subdivision of the land, timbering and forest management, agricultural use, wildlife management, hunting and fishing, or even the construction and maintenance of a limited number of buildings or homes.

Can I put some land into the conservation agreement and leave some land out?

Sometimes it may be appropriate to make only part of a tract subject to a conservation agreement and reserve a portion for other uses. Some landowners may use different types of conservation agreements for different areas of their property. For example, a landowner might use an agricultural agreement on upland farm fields and a more restrictive conservation agreement on adjoining riverbank lands.



Who is responsible for maintaining the property?

The landowner retains ownership along with the right and duty to manage and care for the property. In cases where the conservation organization has experience in managing a property's particular natural assets (for example, rare species habitat), it may be appropriate for the organization to be given the right or opportunity to undertake certain land management tasks.

Will a conservation agreement reduce the property taxes on my land?

Maybe. North Carolina requires county tax assessors to consider the reduction in property value caused by the granting of any conservation agreement. The land owner should apply to the local tax assessor for a change in the ad valorem tax value of land after a conservation agreement is granted, and may find that the tax bill is lowered as a result. However, if the land is already in a "special use" program, such as forestry use or farm use, there may be little, if any, additional property tax savings as a result of the conservation agreement.

What organizations may accept conservation agreements?

Conservation agreements may be granted to nonprofit tax-exempt conservation organizations such as a land trust or conservancy, or to public agencies such as the State of North Carolina, counties and towns.

Will my land be accepted under a conservation agreement program?

It depends. Factors that must be considered include your land's natural assets, the capacity of conservation organizations that serve your area, and the availability of funding. If you wish to sell a conservation agreement, be aware that programs that fund these purchases follow specific criteria, are highly competitive and may have limited assets depending on the current economic climate and other conservation projects being considered.

Several state and federal programs have funds available for the purchase of conservation agreements. They include the North Carolina Clean Water Management Trust Fund, NC Natural Heritage Trust Fund, NC Agricultural Development and Farmland Preservation Trust Fund, NC Parks and Recreation Trust Fund, federal Forest Legacy Program, and federal Farm and Ranchland Protection Program.

The best way to find out whether your land has conservation value is to contact your local land trust. A representative will talk with you about your property and may arrange for a site visit. North Carolina's local land trusts are listed in the back of this document and at www.ctnc.org/ltmap.



What rights and obligations does a conservation agreement create in the grantee/conservation organization?

The grantee/conservation organization is required to monitor and enforce the terms of the conservation agreement. Thus, the agreement must allow the organization access to the property at least annually. The parties may also agree to allow the organization access for scientific research and occasional field trips.

If the landowner reserves rights, such as the right to timber or to subdivide, the grantee may be required to review and approve the exercise of such rights.

The grantee must maintain sufficient assets to finance its monitoring and enforcement obligations into the future. Therefore, organizations that agree to hold conservation agreements must have a stewardship fund or endowment for this purpose, and will usually raise money to add to this fund whenever a new conservation agreement is signed. The grantor and others interested in the project are generally asked to contribute.

Is the conservation agreement a private or public document?

A conservation agreement is a public document like any other land deed, easement or similar legal document, and must be recorded in the Registry of Deeds in the county where the land is located.

Grantee organizations may publicize the gift depending on the preference of the landowner. For example, a corporation may welcome the goodwill generated by protecting natural areas, while a family may prefer relative anonymity.

Will the public have access to land under a conservation agreement?

A conservation agreement does not generally require or allow entry by the public. There are two exceptions:

- a) If the conservation values of the property include its scenic character, then the public must be able to *see* the land; and
- b) If the conservation values of the property include public recreation, such as a hiking trail, then the public must have *physical access* to the land.

Since most conservation agreements protect lands that have much broader conservation values (for example, significant natural systems, wildlife or plant habitat, or forestland and farmland), they do not include public access to the land.

Can the land be sold, mortgaged or bequeathed after a conservation agreement is granted?

Yes, landowners may sell, mortgage or otherwise convey a property with a conservation agreement.

However, the land will remain subject to the conservation agreement. For example:

- The value of the land as security will be its value as restricted by the agreement, not its potential value for all unrestricted purposes and uses;
- The property may be subdivided only as permitted by the agreement;
- Any rights reserved by the grantor will be passed to any heir or purchaser.

If there is a pre-existing deed of trust on the land, it must be subordinated to the conservation agreement before the agreement is granted.



Can a conservation agreement be amended or revoked?

Because conservation agreements are designed to be permanent, amendment or revocation is difficult. Revocation is usually accomplished only through a court proceeding and depends upon demonstrating that the original conservation purposes of the agreement can no longer be sustained due to a change in circumstances (for example, significant changes in the use of surrounding land).

If the conservation agreement is extinguished, the interest in the land (or the proceeds from any sale) is allocated between grantee and grantor, respectively, in proportion to the value of the conservation agreement and the value of the land.



In unusual circumstances an easement can be amended, but only with the agreement of both parties. This is usually done to clarify an ambiguity in the easement. Amendments will not be allowed if they diminish protection measures for the conservation values protected by the conservation agreement or somehow enrich the landowner without properly compensating the grantee.

What are the pros and cons of *selling* a conservation agreement?

The primary advantage of selling a conservation agreement is the actual net cash received. If a grant award funds the purchase, it may also pay for any stewardship endowment needed. However, funds for purchases of conservation agreements are scarce and the grant process is very competitive. Therefore, grants frequently do not cover the entire value of the conservation agreement being sold. If the landowner is willing to sell the conservation agreement for less than its value (a “bargain sale”), then the landowner may claim a federal tax deduction and state tax credit for the difference between the sale price and the appraised value of the conservation agreement. Like any other sale of property, any sales proceeds are subject to capital gains taxes.

The disadvantage of selling a conservation agreement derives from the fact that purchase funds typically come from government grants. This requires the land trust to go through an application process to receive the grant, and requires government agency review of appraisals, survey, title and all other documentation. Purchase of a conservation agreement can take years to complete. Some government grants require that the government agency, rather than the land trust, be the grantee of the conservation agreement.

What are the pros and cons of *donating* a conservation agreement?

Apart from protecting sensitive natural resources, the primary advantages of donating a conservation agreement are tax benefits that the landowner may claim (see flyer insert for current information on the North Carolina Conservation Tax Credit and federal tax deductions for donated easements). A conservation agreement may be donated within a matter of months, while a sale may take longer to finalize. The majority of conservation agreements are donated rather than sold.

Regardless of whether the conservation agreement is sold or donated, land trusts must secure adequate funds for a stewardship endowment to finance future monitoring of the conservation agreement. The land trust will explain this cost and may seek a gift in this amount from the landowner as part of the transaction.

Will I receive tax benefits for donating a conservation agreement?

A landowner who donates a conservation agreement may be able to claim the donation as a charitable contribution. To qualify as a charitable contribution for



federal tax purposes, a conservation agreement must be permanent, it must be made to a qualified grantee (generally a nonprofit organization or a public agency), and it must meet one or more of the following conservation purposes:

- protection of relatively natural habitat of fish, wildlife or plants;
- preservation of open space including farm and forestland;
- preservation of land for public outdoor recreation or education;
- preservation of historically important land or buildings;
- protection of scenic views.

What are the tax advantages from donating a conservation agreement?

The donor of a qualifying conservation agreement may claim the value of the conservation agreement as a deduction for income, gift and estate tax purposes.

Tax laws are occasionally revised, so please refer to the insert in the center of this booklet for details of current federal and North Carolina tax benefits.

How is the value of a conservation agreement determined?

To determine a conservation agreement's value, a licensed appraiser uses a "before and after test" in which the value of the property as restricted by the conservation agreement is subtracted from the value of the property before the restrictions were granted. The difference between the two calculations is the value of the conservation agreement.

The presence of a conservation property provides a benefit to adjacent land, resulting in added value for the neighboring parcels. If granting a conservation agreement has this effect on any other property owned by the donor or donor's family, the appraiser must reduce the value of the donated conservation agreement by the amount of the benefit to the other property.

Whenever possible, a professional appraiser familiar with both the local real estate market and conservation agreements should undertake the appraisal.

- If a conservation agreement is **donated**, it is the landowner's responsibility to provide an appraisal to the IRS, the state and the land trust. There are substantial penalties imposed on both the donor and the appraiser for fraudulent overvaluation used in claiming a charitable contribution. The donor, appraiser and the grantee of the conservation agreement must all review and sign IRS tax form 8283 in order for the donor to claim a federal income tax deduction.
- If a conservation agreement is **purchased for its appraised value**, then the grantee of the agreement must secure an appraisal that substantiates the purchase price.
- If a conservation agreement is **purchased for less than its appraised value** (a "bargain sale") and the landowner seeks tax benefits for the difference between the sale price and the value, then the landowner must provide an appraisal to the IRS, the state and the land trust.

What is required to complete and convey a conservation agreement?

For a landowner to donate a conservation agreement that qualifies for a federal tax deduction and/or state tax credit, the following documents must be prepared:

- Conservation agreement (drafted by either the grantee's or the grantor's attorney and agreed upon by all parties)
- Baseline documentation report of the property (prepared by land trust staff, a biologist, planner or other consultant; see below)
- Qualified independent appraisal
- Title work (prepared by an attorney)
- Survey and legal description (prepared by a surveyor)
- Subordination of any deeds of trust and mineral rights
- IRS Form 8283 (to be attached to the federal tax return of all individuals claiming charitable contributions more than \$5,000, prepared by the grantor or his accountant, and signed by the grantor, grantee and appraiser)
- Environmental assessment of the property for hazardous materials, also known as a "Phase I Report"
- Owner's affidavits and certifications

If a landowner is selling a conservation agreement, all documents are subject to review by the funding source(s) and the agreement's grantee.

In either case (sale or donation), an inventory of the property called a "baseline documentation report" is required to document the condition of the property, any improvements and its conservation values at the time the transaction is completed. This report includes maps, photographs of existing improvements such as buildings and roads, and a description of natural habitats. The report identifies areas where reserved rights (such as timbering or future home sites) are permitted and more ecologically sensitive areas where such uses might not be allowed as determined in the conservation agreement.



North Carolina's Land Trusts

For additional information about conservation agreements, please contact:

Land Trust Alliance

Southeast Program

P.O. Box 33355

Raleigh, NC 27636

(T) 919.515.0760

(F) 919.515.0767

southeast@lta.org

www.landtrustalliance.org/community/southeast

Conservation Trust for North Carolina

1028 Washington St.

Raleigh, NC 27605

(T) 919-828-4199

(F) 919-828-4508

info@ctnc.org

www.ctnc.org

One of North Carolina's local land trusts:

Black Family Land Trust	919-682-5969	www.bflt.org
Blue Ridge Conservancy	828-264-2511	www.blueridgeconservancy.org
Carolina Mountain Land Conservancy	828-697-5777	www.carolinamountain.org
Catawba Lands Conservancy	704-342-3330	www.catawbalands.org
Davidson Lands Conservancy	704-892-1910	www.davidsonlands.org
Eno River Association	919-620-9099	www.enoriver.org
Foothills Conservancy of North Carolina	828-437-9930	www.foothillsconservancy.org
Highlands-Cashiers Land Trust	828-526-1111	www.hicashlt.org
Land Trust for the Little Tennessee	828-524-2711	www.ltl.org
LandTrust for Central North Carolina	704-747-0302	www.landtrustcnc.org
Lumber River Conservancy	910-522-5751	
National Committee for the New River	336-982-6267	www.ncnr.org
North Carolina Coastal Land Trust	910-790-4524	www.coastallandtrust.org
North Carolina Rail-Trails	919-542-0022	www.ncrailtrails.org
Northeast New Hanover Conservancy	910-686-1554	
Pacolet Area Conservancy	828-859-5060	www.pacolet.org
Piedmont Land Conservancy	336-691-0088	www.piedmontland.org
Sandhills Area Land Trust	910-695-4323	www.sandhillslandtrust.org
Smith Island Land Trust	910-457-0089	www.bhic.org
<i>A subsidiary of Bald Head Island Conservancy</i>		
Southern Appalachian Highlands Conservancy	828-253-0095	www.appalachian.org
Tar River Land Conservancy	919-496-5902	www.tarriver.org
Triangle Greenways Council	919-828-8322	www.trianglegreenways.org
Triangle Land Conservancy	919-833-3662	www.triangleland.org

