Conservation Easements: An Introduction

Michelle Lovejoy
NC Foundation for Soil and Water Conservation
Soil & Water Conservation District Statewide Training
November 30, 2020
Agenda

• Overview of Conservation Easement Mechanics (What)
• Need for Working Lands Preservation (Why)
• Conservation District Working Lands Preservation Program Considerations (How)
• 2021 Training Events (What Next)
• Discussion – What you want to see in 2021 trainings
Working Lands Preservation Tools
Agriculture, Horticulture, Forestry

• **Conservation Agreement**: restriction on a land used to advance specific goals to protect or preserve a parcel of land. *Think – Cost-share contracts.*

• **Conservation Easement**: A legal agreement restricting specific property rights that that owner (grantor) gives to a third party that does not own the land (grantee). *Think – utilities, right of ways, deed restrictions*
  
  • **Permanen / Perpetual Easement**: does not expire. *Think – restrictions that run with the land title forever*
  
  • **Term Easement**: for a specific period of time. *Think – Conservation Reserve Enhancement Program*
Property Rights = Bundle of Sticks

- Water Rights
- Hunting Rights
- Development Rights
- Farming Rights
- Mineral Rights
- Timber Rights
Donation versus Compensation

• Appraisal determines
  • highest and best use value (before) and
  • value with adjusted property right restrictions (after)

• Before Value minus After Value = Value of Easement
  • Sale of full value of development potential – no value left for tax deductions
  • Bargain Sale (less than fair market value) – some value left for tax deduction
  • Full Donation – most value left for tax deduction
IRS Tax Deduction Considerations

• To qualify for a federal tax deduction
  • permanent conservation easement is required
  • eligible grantee – nonprofit / land trust, local government / SWCDs

• Meet 1 of 6 Purposes
  • Protect natural habitats (wildlife + plants)
  • Protect open space
  • Protect land for public recreation or education
  • Protect historic features (archeological sites + buildings)
  • Scenic enjoyment of public (Blue Ridge Parkway)
  • Yields significant public benefit as defined by Federal, State, or local government conservation policies
Other Farm Family Conservation Tools

• **Estate Plans**
  • Provides a clear future vision agreed to by all owners
  • Defines ownership transfer and management of operation
  • Structure ownership to limit transfer taxes (income, gift, estate)
  • Builds next generation’s management capacity

• **Farm Management Plan**: business plan with conservation considerations
Other SWCD Conservation Tools

• **Present Use Valuation / PUV:** alternative tax valuation for farming, forestry, horticulture, and wildlife habitat enhancement

• **Voluntary Agriculture Districts:** county designated geographic areas in ag production

• **Countywide Farmland Protection Plans**
Common Land Use Restrictions

• Residential development including subdivision
• Industrial / Commercial development not associated with agricultural needs or other rural enterprises
• Mining
• Dumping / landfills
• Commercial Signage
• Impervious pavement
• Military Training Zones: tall structures, upward facing lights
Required Documentation

• **Working Lands Conservation Easement** – *funder dependent*
  • Note only state funds can be used for term options

• **Appraisals**
  • NC State Certified Residential or General Real Estate Appraiser
  • Uniform Standards of Professional Appraisal Practice

• **Title Work** – verifies clear title, title insurance considerations

• **Land Survey & Legal Description** – reliable Metes and Bounds

• **Baseline Documentation Report** – defines condition at time of restriction, funder specific, used for enforcement

• **Environmental Audit** – identifies any concerns (fuel storage tanks), *funder specific*

• **Federal Tax Form 8283** – IRS report on noncash charitable contributions

• **Grantee Donation Acceptance Letter**
Easement Recitals: factual statements unique to the project, very important for tax deductions

- **Legal Description** of Property, usually “Exhibit A”
- **Description of Grantee** verifying it is a qualified conservation organization
- **Funding Partners** if applicable including 3rd party enforcement rights
- **Baseline Documentation Report** reference
- **Conservation Values** – description of property characteristics
- **Conservation Policies** – reference to legislation, legal definition of agriculture / forestry production
- **Conservation Purpose** – must identify 1 of 6 IRS required purposes for tax deduction qualification
Easement Articles

• General - Statement of Purpose, Duration
• Rights and Responsibilities Retained by Grantor
• Ongoing Responsibilities of Grantor and Grantee
• Representations of the Parties
• Other Options
  • Definitions
  • Affirmative Rights of Grantee
  • Restricted Uses
  • Reserved Rights of Grantor
  • Default and Remedies
  • Administrative Provisions
Exhibits

• Legal Description
• Overview Maps
• Current Conditions and Descriptions Map
  • Soils, Natural Resource Inventory
• Easement Farmstead Location
• Easement Existing Impervious Surface Map & Calculations
Example Grant Application Timeline

NC Agriculture Development and Farmland Preservation Trust Fund

<table>
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<tr>
<th>Mid-Oct. – Mid-Dec.</th>
<th>Applications are open for the general appropriation grant program.</th>
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<tr>
<td>Jan. - April</td>
<td>Internal application evaluation and site visits.</td>
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<tr>
<td>May</td>
<td>Present recommendations to Advisory Committee. Advisory Committee votes.</td>
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<td>July 1</td>
<td>Start of State fiscal year. Biennial budget.</td>
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<td>July-Sept.</td>
<td>Prepare and send out contract offer packets. Contracts signed by grantees.</td>
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<td>Oct. 1</td>
<td>Start of 2-year contract period for general appropriation grants.</td>
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Development Threatens Each State’s Best Agricultural Land

This map shows conversion of non-federal farmland and rangeland to UHO and LDR land uses from 2001-2016. The threat to working farms and ranches is pervasive, often claiming the most productive, versatile, and resilient lands in each state.

Source: farmland.org/farmsunderthreat
American Farmland Trust: Farms Under Threat 2020

• 2001-2016: 11 million ag acres converted
  • 4 million acres = urban & high-density developed
  • 7 million acres = low-density residential

“That is equal to the total amount of US farmland devoted to fruit, nut, and vegetable production or all the cropland in Ohio.”

NC is the 2nd most threatened state

Source: farmland.org/farmsunderthreat
American Farmland Trust: Farms Under Threat 2020

Agricultural Land Conversion 2001-2016

Conversion Affected All Types of Agricultural Land

- Cropland: 336,000 acres
- Pastureland: 162,000 acres
- Woodland: 234,000 acres

What's at stake?

- 10,362,000 acres of agricultural land remain on 46,000 farms

Our Productivity, Versatility, and Resiliency (PVR) index helps identify high-quality agricultural land (see page 2).

Farmland is composed of cropland, pastureland, and woodland associated with farms.
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NC Land Trusts

1. Blue Ridge Conservancy
2. Carolina Mountain Land Conservancy
3. Catawba Lands Conservancy
4. Davidson Lands Conservancy
5. Eno River Association
6. Foothills Conservancy of North Carolina
7. Highlands-Cashiers Land Trust
8. Land Trust for the Little Tennessee
9. LandTrust for Central North Carolina
10. Lumber River Conservancy
11. National Committee for the New River
12. Northeast New Hanover Conservancy
13. North Carolina Coastal Land Trust
14. Pacolet Area Conservancy
15. Piedmont Land Conservancy
16. Sandhills Area Land Trust
17. Smith Island Land Trust (a subsidiary of the Bald Head Island Conservancy)
18. Southern Appalachian Highlands Conservancy
19. Tar River Land Conservancy
20. Triangle Greenways Council
21. Triangle Land Conservancy

STATEWIDE
Black Family Land Trust
Conservation Trust for North Carolina
North Carolina Rail-Trails
Conservation District Easement Program – Why?

• General Statute 139 empowers SWCD with land ownership, including holding easements.
• Local board can set direction for land protection and coordinate with county.
• Current Cost-Share programs act like temporary easements and include monitoring requirements.
• Have long standing relationships with farm families.
• Not a step to be taken lightly, need to consider many things.
Conservation District Easement Program – What to consider?

• Perpetual responsibilities
• Dedicated staff resources
• Continuous education of board & staff
• Record keeping requirements
• Changing land ownership over time
• Long term stewardship resources
• Potential enforcement issues

**Where to start?**

• Talk with county & local land trust
• Talk with other Conservation Districts
• Research training opportunities and guides
• Determine available resources and gaps
NC Dept of Ag Resource Staff

- **Western Region - Jeff Darnell**
- **West Central Region - Richard Reich**
- **North Central Region - Scott Shoulars**
- **South Central Region - Dick Fowler**
- **Northeastern Region - Rodney Woolard**
- **Southeastern Region - Joe Austin**
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2021 Trainings: Conservation Districts & Landowners

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<tr>
<th>Holds Easements</th>
<th>Monitors Easements for Others</th>
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<th>Purchase of Development Rights Programs</th>
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• 2008 – 2010 Working Lands Project
  • Led by Jerry Dorsett, Conservation Trust for NC, others
  • Offered board and staff training
  • Created Working Lands Resource Manual

• 2021 Prep Work
  • Offer listening sessions – what do you want to get out of the training?
  • Review current involvement levels from 2010
2021 Trainings for Conservation Districts & Landowners

• Foundation Grant from NC Tobacco Trust Fund Commission with
  • Working Lands Trust
  • NC Cooperative Extension
  • NC Association of Soil and Water Conservation Districts
  • NC Department of Agriculture

• #1 Regional Trainings: Working Lands Easement Programs
  • Day / online training designed for Board & Staff
  • Based on 2008 trainings
  • Introduction to Easements, Legal Considerations, Fiscal Considerations
2021 Trainings: Conservation Districts & Landowners

• #2 Conservation Easement Technical Trainings
  • Multi-day training designed for Staff
  • Easement language options, baseline documentation reports, stewardship / monitoring program, landowner relations

• #3 Landowner Estate Planning Trainings
  • Evening / online short sessions designed for farm families
  • Introduction to estate planning, available resources, how a conservation easement can work for long term family goals

• Proposed Expansion (funding TBD)
  • Provide technical assistance to Conservation Districts
  • Update Working Lands Resource Manual
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