

# VOLUNTARY CONSERVATION AGREEMENTS

An Introduction for North Carolina Land Owners



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# Table of Contents

	Page
Introduction.....	3
What is a conservation agreement?.....	4
When is a conservation agreement the right method for land protection?.....	5
How long does a conservation agreement last?.....	5
What conservation purposes are recognized by the Internal Revenue Service?	6
What restrictions are contained in a conservation agreement?.....	6
What current and future uses do conservation agreements allow?.....	7
Can I put some land into the conservation agreement and leave some land out?	7
Who is responsible for maintaining the property?.....	7
What are the tax advantages from donating a conservation agreement?.....	8
Federal Estate Tax.....	8
Federal Income Tax.....	8
State Income Tax.....	9
Local Property Taxes.....	9
How is the value of an agreement determined for tax purposes?.....	10
Can the land be subdivided, sold, mortgaged or bequeathed after an agreement is granted?.....	11
Can a conservation agreement be amended or revoked?.....	11
Is the conservation agreement a private or public document?.....	12
Will the public have access to land under conservation agreement?.....	12
What rights and obligations does a conservation agreement create in the Grantee?.....	13
What is required to complete and convey a conservation agreement?.....	13
What organizations accept conservation agreements?.....	13
Sources.....	14



## **The Conservation Agreement**

is an effective means of protecting and conserving land in North Carolina. Conservation agreements (sometimes called easements) have been used to protect lands as varied as mountain ridgetops, piedmont river corridors, farms, and coastal beaches.

Because conservation agreements have only recently become popular, most landowners are unaware of how useful this land protection tool can be. Conservation agreements enable landowners to preserve their land, maintain ownership of it, and usually realize significant tax savings or other financial incentives.

This brochure is designed to answer the basic questions that a landowner might have about conservation agreements. Before finalizing a conservation agreement, as with any real estate transaction, landowners should consult their personal legal and tax advisors.

More detailed information about conservation agreements is available from the sources cited at the end of this brochure.

## What is a conservation agreement?

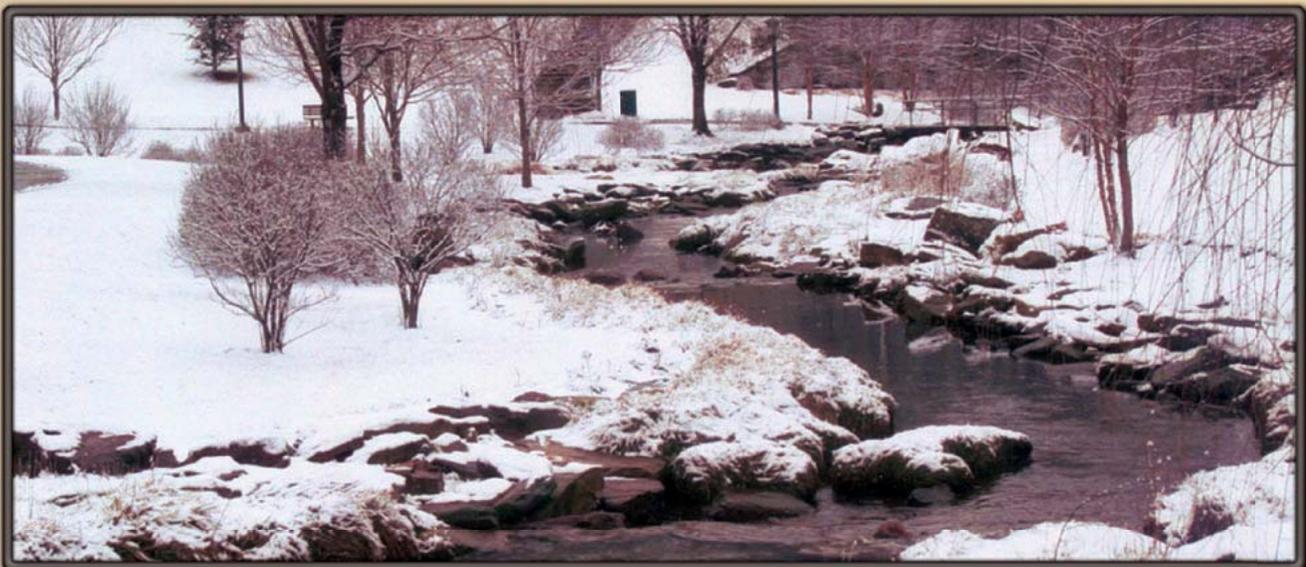
A conservation agreement is a written agreement between a landowner and a qualified conservation organization or public agency, in which:

- the landowner (Grantor or Donor) promises to keep the land in its natural condition without extensive disturbance, and
- the conservation organization or public agency (Grantee) is granted the right to enforce the covenants of the agreement and to monitor the property.

The conservation agreement is similar to a declaration of restrictive covenants in a subdivision. That is, it contains a series of restrictions relating to various uses of land.

There are different types of conservation agreements, and they go by several 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 and an agricultural easement.

Conservation agreements are intended to preserve property in its natural, undeveloped condition providing a benefit to the public by conserving open lands, forests, farmland, stream banks, and significant natural resources. Because of this public benefit, there are significant federal, state, and local tax incentives for the landowner who donates a conservation agreement. And there are even some programs that make grants available for the purchase of conservation agreements from landowners on certain eligible lands.





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

While it is difficult to generalize, conservation agreements seem to work best when the following circumstances are present:

- the landowner is motivated by the desire to conserve and preserve the land;
- the land does not require intensive management;
- current and future uses of the land by the owner are compatible with preservation of its natural features; and
- the owner can utilize the tax advantages of an income tax deduction, tax credit, and/or a reduction in the value of his or her potential estate.

### **How long does a conservation agreement last?**

Under North Carolina property law, a conservation agreement may be created for a period of years or it may be perpetual. However, if the landowner wishes to claim federal and state income tax deductions, the agreement must be granted in perpetuity.

## What conservation purposes are recognized by the Internal Revenue Service?

To qualify as a charitable contribution for federal tax purposes, a conservation agreement must be perpetual, 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 habitats of fish, wildlife, or plants;
- preservation of open space including farm and forest land;
- preservation of land for public outdoor recreation or education;
- preservation of historically important land or buildings.

To determine whether the land will qualify under one or more of these conservation purposes, a natural resource inventory including maps, photographs of existing buildings and roads, a description of natural habitats, and a survey of wildlife should be prepared. The inventory allows the owner to decide which conservation purpose is met and will distinguish ecologically sensitive areas from other areas that might be appropriate for other uses.

## What restrictions are contained in a conservation agreement?

A conservation agreement's restrictions should be tailored to the particular conservation values of the land and interests of the landowner and grantee. Examples of activities that may be prohibited or restricted in a conservation agreement include industrial or commercial use, 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 subdivision of the land into parcels, timbering and forest management, agricultural use, wildlife management, hunting and fishing, or even the construction and maintenance of a limited number of new homes.

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

Sometimes it may be appropriate to make only a portion of a tract subject to a conservation agreement, and reserve a portion of the land for future development or unrestricted use. Some landowners may use different types of conservation agreements for different areas of their property. For example, an owner might use an agricultural agreement on upland farm fields, and a more restrictive conservation agreement on the adjoining riverbank lands.

## Who is responsible for maintaining the property?

The Grantor retains ownership along with the right and duty to manage and care for the property. In some cases, where the conservation organization has special experience in managing a particular habitat that exists on the property (for example, rare species habitat), it may be appropriate for the Grantee to be given the right to undertake certain management tasks.



## 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 and for gift and estate tax purposes. Tax reductions are not awarded for the sale of conservation agreements. Here are the details:

### Federal Estate Tax

The conservation agreement can be an ideal legal technique for landowners whose goals include long-term conservation of their land for the benefit of future generations. Use of conservation agreements may help prevent the breakup of family farms or estates necessitated by otherwise heavy estate tax liability.

Conservation agreements provide protection against the potential appreciation in property values over time. If the agreement has been granted during the Donor's lifetime, only the restricted value of property under a conservation agreement will be included in the owner's estate, resulting in a lower estate tax. If the conservation agreement is granted by will, the Donor's estate may claim an unlimited charitable deduction for the value of the agreement, which has the same effect of reducing the estate tax.

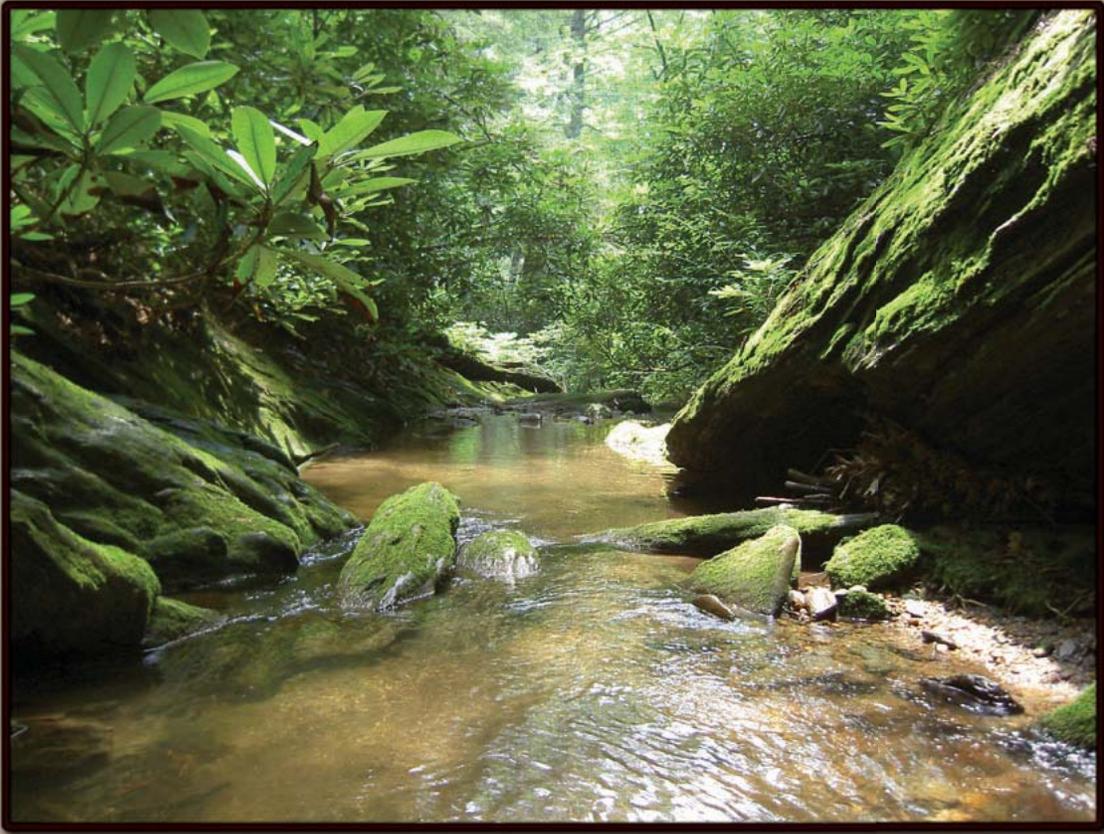
In addition, up to 40% of the land's residual value (that is, its restricted value) may also be deducted from the Donor's estate in some special situations.

### Federal Income Tax

If the conservation agreement gift is made during the Donor's lifetime and the land is long-term capital gain property, the Donor may claim a federal income tax deduction for the full fair market value of the conservation agreement.

However, to prevent a Donor from using the deduction to avoid paying tax, the Internal Revenue Service (IRS) places a cap on the amount of the deduction that can be claimed in the year the donation is made. The cap is set generally at 30% of the adjusted gross income for individuals. Individuals may carry over any unused portion of the donation for the next five years and deduct the same percentages each year.

For example, an owner who donates a conservation agreement valued at \$100,000 and who has an annual adjusted gross income of \$60,000 may deduct 30% of \$60,000 (\$18,000) in each of years 1-5 and the remaining \$10,000 in year six. If the land is ordinary income property, the contribution is limited to the basis of the property; no deduction for unrealized appreciation is allowed.



### **State Income Tax**

In North Carolina, a special income tax credit (i.e., dollar-for-dollar subtraction of owed income tax) equal to 25% of the fair market value of donated property (up to a maximum credit of \$250,000 for individuals and \$500,000 for corporations) is also available for gifts of land and conservation agreements made to qualified Donees.

Any unused portion of the credit may be carried forward over the next five years and any remainder may be claimed as a regular charitable contribution deduction. The Donor must apply to the NC Department of Environment and Natural Resources for certification that the gift qualifies for conservation purposes in the public interest, and attach the certification to his or her tax return.

### **Local Property Taxes**

North Carolina requires county tax assessors to consider the reduction in property value caused by the granting of any conservation agreement. The Donor should apply for a change in the ad valorem tax appraisal of land after an agreement is granted.

## How is the value of an agreement determined for tax purposes?

An appraiser using the "before and after test" determines the value of a conservation agreement. That is, 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.

Frequently, the presence of a park or other conservation property is an amenity to adjacent land, and actually results in added value to the adjoining land. If the granting of a conservation agreement has this effect on any property owned by the Donor or Donor's family, the appraiser must reduce the value of the donated conservation agreement by the amount of any benefit to the other property.

A professional appraiser familiar with both the local real estate market and conservation agreements should undertake the appraisal. There are substantial penalties imposed on both the Donor and the appraiser for any overvaluation. Also, the Donor, appraiser, and the Grantee of the conservation agreement must all sign a special tax form in order for the Donor to claim a federal income tax deduction.





### **Can the land be subdivided, sold, mortgaged or bequeathed after an agreement is granted?**

Yes, you can sell, mortgage, or otherwise convey the property. 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, not its potential value for all unrestricted purposes and uses;
- the property may be subdivided, subject to any specific prohibition or limitation in the agreement against subdivision; and
- 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 due to a change in circumstances (for example, in surrounding land use) the original conservation purposes of the agreement can no longer be sustained.

If the agreement is extinguished, the interest in the land (or the proceeds from any sale) is allocated to Grantee and Grantor, respectively, in proportion to the value of the agreement and the value of the land. In rare 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 the conservation values protected by the easement or somehow enrich the landowner without properly compensating the Grantee.



### **Is the conservation agreement a private or public document?**

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

Grantee organizations will cooperate with a Grantor who wishes either to publicize the gift (for example, a corporation may seek media coverage as part of its public relations program) or to minimize publicity (for example, a family that wishes relative anonymity).

### **Will the public have access to land under conservation agreement?**

In almost all cases, a conservation agreement will not require or allow entry by the public. However, two types of conservation agreements do require either visual or physical access by the public to qualify as charitable contributions under the Internal Revenue Code. Those agreements are:

- scenic and open space agreements, in which the scenic character of the land is critical to its conservation value (visual, rather than physical, access to or across the property is sufficient);
- land areas set aside for recreation or education for the general public (these agreements are granted infrequently due to the extensive public access and use they require).

On the other hand, conservation agreements that protect significant natural environmental systems, such as fish, wildlife, or plant habitat, or forestland and farmland, where there is an official government policy to protect forestland and family farms from fragmentation, will not require public access.

## What rights and obligations does a conservation agreement create in the Grantee?

The Grantee is required by the IRS to monitor and enforce the obligations contained in the conservation agreement. Thus, the conservation agreement should provide access to the property for the Grantee at least annually. The Grantor and Grantee may also decide that it is appropriate for the Grantee to be provided access for scientific research and occasional field trips by its members.

If the Grantor 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 is even required to maintain sufficient assets to carry out its monitoring and enforcement obligations in the future. Therefore, organizations that agree to hold conservation agreements usually have a stewardship fund or endowment set aside for this purpose, and will usually raise money to add to this fund whenever a new conservation agreement is signed. The Donor and others interested in the project are generally asked to contribute to the fund.

## What is required to complete and convey a conservation agreement?

For a Grantor to convey a conservation agreement that qualifies for a federal tax deduction, the following documents need to be prepared:

- Conservation Agreement Document (drafted by either the Grantee's or the Grantor's attorney)
- Inventory of the Property (prepared by a biologist, planner or other consultant)
- Appraisal (prepared by an independent appraiser working for the Grantor)
- Title work (prepared by an attorney)
- Survey and legal description (prepared by a surveyor)
- Form 8283 (an attachment to the federal tax return of all individuals claiming contributions more than \$5,000, prepared by the Grantor or his accountant, and signed by the Grantor, Grantee and appraiser. If the deduction claimed is greater than \$500,000, then the full appraisal must also be attached).

## What organizations accept conservation agreements?

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

For additional information about conservation agreements, please contact:

## **Land Trust Alliance**

1331 H ST. N.W. Suite 400  
Washington D.C. 20005-4734  
(T) 202.638.4725  
(F) 202.638.4730  
[www.lta.org](http://www.lta.org)

## **Conservation Trust for North Carolina**

1028 Washington Street  
Raleigh, North Carolina 27605  
(T) 919-828-4199  
(F) 919-828-4508  
[www.ctnc.org](http://www.ctnc.org)

## **One of North Carolina's 23 local land trusts:**

- Blue Ridge Rural Land Trust. 828-263-6776. [www.brrlt.org](http://www.brrlt.org)
- Carolina Mountain Land Conservancy. 828-697-5777. [www.carolinamountain.org](http://www.carolinamountain.org)
- Catawba Lands Conservancy. 704.342.3330. [www.catawbalands.org](http://www.catawbalands.org)
- Davidson Lands Conservancy. 704.892.1910. [www.davidsonlands.org](http://www.davidsonlands.org)
- Eno River Association. 919.620.9099. [www.enoriver.org](http://www.enoriver.org)
- Foothills Conservancy of North Carolina. 828.437.9930. [www.foothillsconservancy.org](http://www.foothillsconservancy.org)
- High Country Conservancy. 828.264.2511. [www.highcountryconservancy.org](http://www.highcountryconservancy.org)
- Highlands-Cashiers Land Trust. 828.526.9938.
- Land Trust for the Little Tennessee. 828.524.2711. [www.ltlit.org](http://www.ltlit.org)
- LandTrust for Central North Carolina. 704.747.0302. [www.landtrustcnc.org](http://www.landtrustcnc.org)
- Lumber River Conservancy. 910.522.5751.
- National Committee for the New River. 336.246.4871. [www.ncnr.org](http://www.ncnr.org)
- North Carolina Coastal Land Trust. 910.790.4524. [www.coastallandtrust.org](http://www.coastallandtrust.org)
- North Carolina Rail-Trails. 919.542.0022. [www.NC Rail-Trails.org](http://www.NC Rail-Trails.org)
- Northeast New Hanover Conservancy. 910.686.1554.
- Pacolet Area Conservancy. 828.859.5060. [www.pacolet.org](http://www.pacolet.org)
- Piedmont Land Conservancy. 336.691.0088. [www.piedmontland.org](http://www.piedmontland.org)
- Sandhills Area Land Trust. 910.695.4323. [www.sandhillslandtrust.org](http://www.sandhillslandtrust.org)
- Smith Island Land Trust. 910.457.0089. [www.bhic.org](http://www.bhic.org). A subsidiary of  
Bald Head Island Conservancy
- Southern Appalachian Highlands Conservancy. 828.253.0095. [www.appalachian.org](http://www.appalachian.org)
- Tar River Land Conservancy. 919.496.5902. [www.tarriver.org](http://www.tarriver.org)
- Triangle Greenways Council. 919.715.4191. [www.trianglegreenways.org](http://www.trianglegreenways.org)
- Triangle Land Conservancy. 919.833.3662. [www.tlc-nc.org](http://www.tlc-nc.org)

