

Voluntary Conservation Agreements

An Introduction for North Carolina Landowners



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Introduction



TLC staff and funding partners present the Delbridge family with their conservation easement sign for their Johnston County farm. Photo by Cara Lewis.

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 **Triangle Land Conservancy** to discuss conservation options that may be available for your property. TLC serves a 6 county region; Chatham, Orange, Durham, Wake, Lee, and Johnston. TLC's staff are listed here <https://triangleland.org/about/staff>, and the land protection staff are split into western and eastern regions. Feel free to reach out directly to a staff member in your area.

What is a conservation agreement?

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

1. the landowner (also called grantor or donor) promises to keep his or her land in its natural condition without subdivision or extensive development, and
2. 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 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.

Lola Stephenson Delbridge Farm in Johnston County. Photo by Cara Lewis.



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

Triangle Land Conservancy evaluates properties based on our mission to create a healthier and more vibrant Triangle region by **safeguarding clean water, protecting natural habitats, supporting local farms and food, and connecting people with nature.**

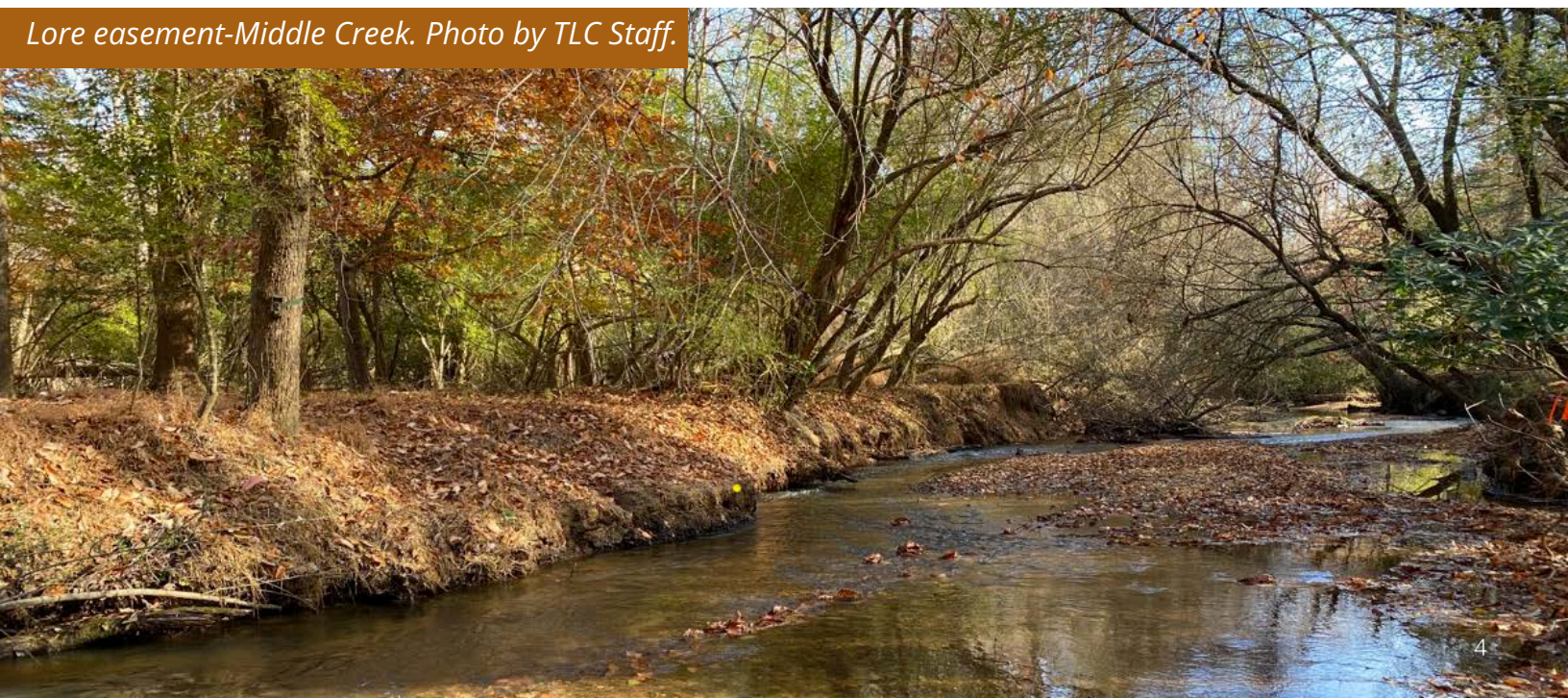
TLC works with landowners to determine what their needs and goals are for their property. A conservation easement can be essential for passing land on to the next generation. Whether the easement is granted during life or by will, it can make a critical difference in the heirs' ability to keep the land intact. By removing the potential for development, the easement decreases the land's market value, lowering estate tax. All of these factors are discussed when a landowner is considering putting an easement on their property with TLC.

Conservation agreements work best when:

1. the landowner is motivated by the desire to conserve and preserve the land,
2. the land is not heavily developed or subdivided,
3. the land does not require intensive management, and
4. 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 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.

Lore easement-Middle Creek. Photo by TLC Staff.



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. Triangle Land Conservancy only participates in perpetual (permanent) easements, and 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, access for road or power line construction, and extensive timbering. Funding sources can also influence the restricted activities.

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, and even the construction and maintenance of a limited number of buildings or homes. Typically, Triangle Land Conservancy allows up to 2% of a property to be covered in impervious surfaces (houses, barns, etc).

Oaky Grove Farm. Photo by TLC Staff.



Can I put some land into the conservation agreement and leave some 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 wish to leave a portion of their property out of a conservation agreement in order to sell off lots for future home sites, or other uses that would not generally be permitted by the conservation agreement.

Who is responsible for maintaining the property?

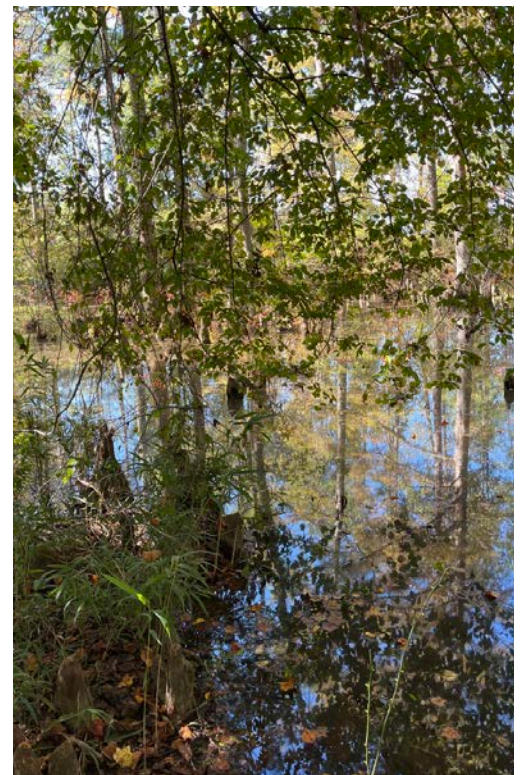
The landowner retains ownership along with the right and duty to manage and care for the property.

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.



Bailey Farm field and wetland. Photos by TLC Staff.



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 Triangle Land Conservancy considers when evaluating properties include location, size, the land's natural resources, 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 Land and Water Fund, NC Agricultural Development and Farmland Preservation Trust Fund, USDA Agricultural Conservation Easement Program, Raleigh Watershed Protection Program, Durham Watershed Protection Program, and other county and local funding sources.

*TLC's Associate Director of Land Protection West **Margaret Sands** and Executive Director **Sandy Sweitzer** sign a conservation easement with the Staats family for their Orange County farm. Photo by Olivia Garcia.*



What rights and obligations does a conservation agreement create for Triangle Land Conservancy?

As the holder of the agreement, Triangle Land Conservancy is required to monitor and enforce the terms of the conservation agreement. Thus, the agreement must allow Triangle Land Conservancy to access to the property at least annually. Landowners are notified prior to annual monitoring visits.

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

Triangle Land Conservancy must maintain sufficient assets to finance its monitoring and enforcement obligations into the future. Therefore, Triangle Land Conservancy 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 landowner and others interested in the project are generally asked to contribute.



TLC Stewardship Manager Hannah Royal monitoring an easement. Photo by TLC Staff.

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.

Triangle Land Conservancy may publicize the agreement 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:

- If the conservation values of the property include its scenic character, then the public must be able to **see** the land; and
- 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.

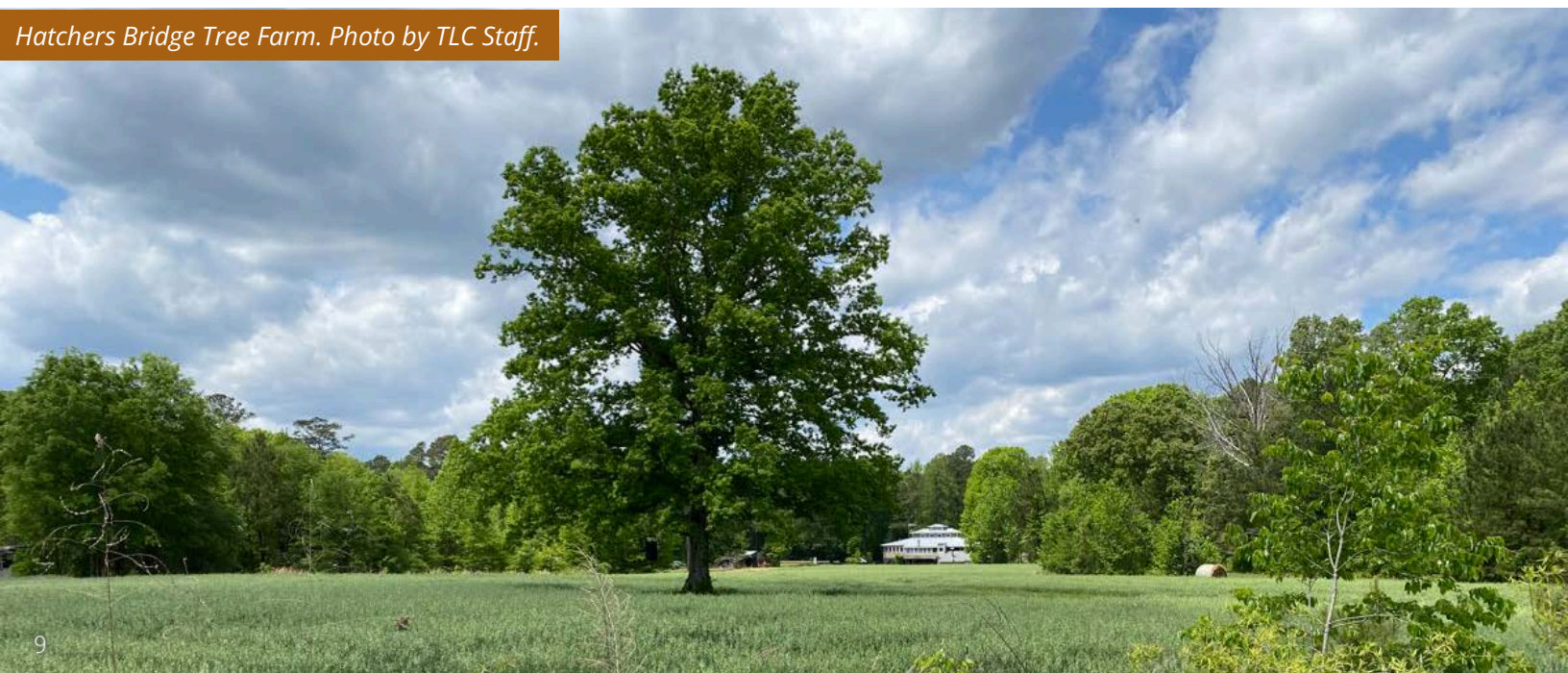
Since most conservation agreements protect lands that have much broader conservation values (for example, significant natural systems, wildlife or plant habitat, or forestland and farmland), they do not include public access to the land.

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.



Hatchers Bridge Tree Farm. Photo by TLC Staff.

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 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. The timeline for donation is a benefit as well; a conservation agreement may be donated within a matter of months, while a sale may take longer to finalize. Many 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.

Lower Swift Creek. Photo by Brenna Thompson.



How is the value of a conservation agreement determined?

To determine a conservation agreement's value, a licensed appraiser uses a "before and after appraisal" 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 Triangle Land Conservancy 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 Triangle Land Conservancy orders 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 Triangle Land Conservancy.

Lazy J Ranch. Photo by Brenna Thompson.



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 Triangle Land Conservancy.

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.



For more information on conservation agreements and other things TLC, you can get in touch with our staff by emailing us at info@triangleland.org or calling **919-908-8809**.

Triangle Land Conservancy strives to create a healthier and more vibrant Triangle region by safeguarding clean water, protecting natural habitat, supporting local farms and food, and connecting people with nature through land protection and stewardship, catalyzing community action, and collaboration. Learn more at our website at www.triangleland.org and connect with us on [Facebook](#), [Instagram](#), and [LinkedIn](#).