



BUNCOMBE COUNTY FARMLAND PRESERVATION PROGRAM

A LANDOWNER'S GUIDE TO CONSERVATION EASEMENTS



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An Introduction to Conservation Easements

Buncombe County
Farmland Preservation Program



Easement Overview

A conservation easement is a legally enforceable agreement between a landowner and a conservation organization, in which the landowner gives up certain development rights.

Conservation easements are contracts that can be specialized to the individual property and the landowner's conservation objectives. The property restrictions are explained in a conservation easement deed, which is a legal document recorded at the Registry of Deeds on the day of the closing. The easement creates an encumbrance on the title, which legally binds present and future owners to the terms and follows the land in perpetuity. The conservation organization that holds the conservation easement cannot exercise the development rights given up by the landowner. The conservation organization becomes a guardian, holding the responsibility to monitor the land to ensure that it follows the terms of the conservation easement. The conservation organization has the legal right and obligation to enforce the terms of the easement if there is a violation.

The purpose of a conservation easement is to protect conservation values of a property. Here are a few examples of conservation values: water quality, soil quality, forest and wildlife habitat, scenic viewshed, agricultural value, historic and heritage values, open space, steep slopes and ridges and prime agricultural soils. Buncombe County protect lands with high conservation values in order to protect these resources for generations to come.

Reserved Rights - What can I still do?	Restrictions - What can't I do?
<ul style="list-style-type: none">● Residential use● Water● Hunt & Fish● Sell or transfer the property● Lease property● Use land as collateral● Continue Agriculture & land management● Harvest Timber● Restrict public access/right to privacy● Personal use and enjoyment● Build new trails or minor structures● Maintain existing roads, water systems, utilities	<ul style="list-style-type: none">● Subdivision● Development● Industrial Use● Non-agricultural commercial use

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Potential Tax Benefits

Federal income tax deduction

If a conservation easement is voluntarily donated to a conservation organization, and if it benefits the public by permanently protecting important conservation resources, it can qualify as a charitable tax deduction on the landowner's federal income tax return. The amount of the deduction the landowner is able to claim is equal to the value they gave up. The amount of the deduction is determined by this formula:

Fair Market Value – Protected Value = Easement Value.

- Landowners - The landowner who donated the easement can deduct up to 50% of his or her adjusted gross income for the year in which the gift occurs and can "carry forward" the unused amount of the deduction and apply that to his or her income for a total of 15 more years.
- Farmers - If the landowner who donated the easement is a farmer, they can deduct up to 100% of their adjusted gross income for the year in which the gift offers and can "carry forward" the unused amount of the deduction and apply that to their income for a total of 15 years.

Who qualifies as a farmer? The 2015 law defines a farmer or rancher as someone who receives more than 50% of his or her gross income from "the trade or business of farming." The law references IRC 2032A(e)(5) to define activities that count as farming, including:

- "Cultivating the soil or raising or harvesting any agricultural or horticultural commodity (including the raising, shearing, feeding, caring for, training and management of animals) on a farm;
- Handling, drying, packing, grading or storing on a farm any agricultural or horticultural commodity in its unmanufactured state, but only if the owner, tenant or operator of the farm regularly produces more than one-half of the commodity so treated;
- The planting, cultivating, caring for or cutting of trees, or the preparation (other than milling) of trees for market. For an easement to qualify for a farmer or rancher, it must contain a restriction requiring that the land remain "available for agriculture."

Example Scenarios:

- Non-Farmer - If a landowner earning \$50,000 a year who donated a \$1 million conservation easement could deduct \$25,000 (50% of income) for the year of the donation and for each of an additional 15 years. This would result in a total of \$400,000 in deductions.

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- **Farmer Example** - If a landowner is a farmer and earning \$50,000 a year who donated a \$1 million conservation easement could deduct \$50,000 (100% of income) in the first year and then for each of the following 15 years, realizing a maximum of \$800,000 in deductions.

In order to be eligible to claim the deduction, a conservation organization must hold the perpetual conservation easement and the easement must fulfill several conservation purposes. Conservation easement donations must comply with “conservation purposes” as defined in IRC 170(h). These include the protection of land for the enjoyment or education of the public; relatively natural habitat for fish, wildlife or plants; scenic open space or open space that has been identified by a government agency as worthy of protection; or historically important property. (IRC Section 170(h). US Treas. Reg. 1.170A-14(a).

Estate and gift tax valuation

When a landowner donates a conservation easement on property, he or she lowers the value of that property, and the potential estate tax that may be due if he or she owns that property at death.

Estate tax exclusion

If a landowner donates a conservation easement on property and all the requirements of the IRS are met, an additional 40% of the value of the land with the easement in place (not including the value of the structures on the property) can be excluded from the gross estate of the decedent.

Present Use Value Tax Program

If the following conditions are met, then a property can stay in the Present Use Value Tax (PUV) Program: A property is in the Present Use Value Tax Program before the conservation easement closes, and the landowner donates at least 25% of the easement value of the conservation easement. To join the PUV program – contact Whitney Meadows, Exemption Specialist at whitney.meadows@buncombecounty.org or 828-250-4915

Potential Property Tax Reductions

County tax offices do not re-appraise annually, but only every 4-8 years. Even so, you may formally request a re-evaluation of tax value based upon your appraiser’s opinion of value. This is typically done during the January 1-31 listing period. BCSWCD cannot guarantee, however, that a conservation easement will result in a lower assessed tax value for the property. You may already be receiving the benefit of present use value land use (forestry, horticulture, agricultural or wildlife) valuation, so it may or may not benefit you.

Please Note - Buncombe County Soil and Water Conservation District (BCSWCD) cannot provide legal or tax advice; therefore, you must retain your own legal counsel and tax specialist to advise you. BCSWCD will draft documents, prepare baseline documentation reports and discuss conservation options with you, but you and your advisors are solely responsible for the decisions you make.

Steps in the Easement Process

- Initial Steps – The interested landowner reaches out to staff and we provide an information packet about conservation easements and the process, including an application to fill out. If the property meets basic size requirements for the program, staff schedules a time to visit the property and meet the landowner to discuss their conservation goals and to explain the process. Staff encourages the landowner to reach out to their partner/spouse/children/siblings about the easement process and discuss your goals around placing one on their property. In addition, it is important to talk to your attorney, financial advisor and/or accountant because there are financial and legal implications surrounding easements and it is important that these discussions happen with whoever knows your personal financial situation.

- Approval by Ag Advisory Board - Staff evaluates the proposed project with the Agricultural Advisory Farmland Preservation Ranking Criteria. Staff presents the project to the Agricultural Advisory Board and several board members visit the property before the board decides to vote on the project.

- Survey – The property should be surveyed in order to have accurate boundary surveyed and to ensure that any future building plans are recorded on the plat.

- Environmental Assessment – Hired consultants collect information from the landowner as well as historical information on the property to determine if there are any environmental hazards or contaminants on the property from past or current use. If there are findings in this assessment, another assessment may be required, and the landowner will have to remediate the issue before the easement can move forward. For example buried oil tanks, contaminants, storage of hazardous materials etc., this doesn't preclude you from the process, but will have to be resolved before easement can close.

- Baseline Documentation Report – Staff or hired consultant collects information on the proposed property and prepares this report to document the current condition of the property and the conservation values that will be protected.

- Appraisal – An appraisal is completed to determine the easement value of the property in order to apply for grant funds to partially compensate the landowner (if needed). The amount of funding allowed to be requested is determined by this formula: Fair Market Value – Protected Value = Easement Value. Typically, a grant agency will fund up to 50% of the easement value, or 75% if the project is very special and eligible for multiple grants to be paired together. BCSWCD requires the landowner to donate at least 25% of the easement value for all of their easement projects.

- Clear Title – The property must have a clear title free of any encumbrances or liens in order to be protected with a conservation easement. If the property is mortgaged, a subordination

agreement should be obtained from the lender, in which the lender agrees that if the mortgage is ever foreclosed and the property is subsequently sold, it will be sold subject to the conservation easement. Provided there is still enough equity after the conservation easement to protect the bank's interest, the bank will generally agree to subordinate.

- Conservation Easement Deed – The conservation easement deed is drafted by the BCSWCD easement attorney, reviewed by staff and the landowners and their legal representation. The easement document establishes the parameters of the important restrictions and protections of the easement and establishes how the easement will be monitored and enforced. After the easement document is finalized, it is signed by both parties, notarized, and recorded in the Buncombe County Register of Deeds Office.

Stewardship and Monitoring

When Buncombe Farmland Preservation Program protects a property with a conservation easement, we agree to annually monitor and enforce the terms of the easement in perpetuity. By agreeing to hold the easement, we become responsible for the following stewardship obligations. We will compare the properties' current condition to the baseline documentation report and will record our findings and determine if current activities are harming the conservation values of the protected property. Easements with greater potential for violations, or past violations, may require more frequent monitoring.

- Annual Monitoring Visit- Staff or a contracting consultant will contact the easement landowner to schedule an annual monitoring visit to the property. The owner can join the inspector on the property, or they can answer questions over the phone if they are not present on the property. The monitor walks the property covering as much of the easement as possible and documents the current condition of the property using a monitoring form and photographs.
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- Monitoring Documentation – After the site visit, staff or a contracting consultant will complete a monitoring report including information about the monitoring visit and documenting the condition of the property with notes, photographs, waypoints and maps. Staff will notify the landowner if anything that comes up from the monitoring visit was not in compliance. Buncombe County stores these records in a secure place physically and digitally to ensure that they could be available to be used in court if the easement or a violation is legally challenged.
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- Negotiating & Enforcement – If an activity occurs that damages the conservation values of the protected property, it is considered a violation of the easement terms and Buncombe County will negotiate with the responsible party to resolve the issue. If necessary, Buncombe County will enforce the conservation easement in court.
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Buncombe County Farmland Preservation Staff wants to help you determine if a conservation easement is right for your farm and family. It is not the answer for everyone. The staff is experienced and will assist you through the easement process. However, you have to be the one to make the decision to protect your property and to seek your own legal and financial advice. Before making a significant decision with your property, please explore the option with your own advisors.

Questions?

Please reach out to the Farmland Preservation Program staff:

Ariel Zijp Farmland Preservation Manager	Phone: 828-250-4794 Cell: 828-231-0806	ariel.zijp@buncombecounty.org
Avni Naik Farmland Preservation Coordinator	Phone: 828-250-4792 Cell: 828-273-3842	avni.naik@buncombecounty.org



Steps in the Conservation Easement Process

The conservation easement (CE) process can take anywhere from 1-4 years depending on a number of factors. A full donation easement may take 1-2 years to complete, whereas grant-funded easements may take 2-5 years. We hope that this list will provide a broad overview of the steps in closing an easement. PLEASE NOTE: County staff will be coordinating most of this work. We will check in with you about setting up surveys or site visits when needed and will send over documents for your review before we close the easement. This list is not comprehensive but is an overview before we dive into the details.

1. Initial Evaluation & Site Visit (2-4 months):

- Initial conversation with landowner and provide informational material, and discussion of landowner's goals for the property
- Landowner completes and returns easement application
- Staff reviews application, prepares maps, and gathers information about property
- Staff evaluates the application in accordance with the BCSWCD Farmland Preservation selection criteria, visits the site, and photographs the land with the landowner
- If Lien on property - Landowner asks lender if they will subordinate. If not, consider refinancing options

2. Agriculture Advisory Board (AAB) Approval Process (3 months):

- Staff introduces the project to the Board
- Ag Advisory Board members visit the farm with landowner to see the property
- Landowner visits an Ag Advisory Board meeting to discuss objectives
- Ag Advisory Board votes on the easement project
- Staff requests transaction costs for the project from County Commissioners
- Landowners (all parties involved: landowners, spouses, anyone on the deed or with marital interests) sign the county/landowner contract

3. Funding Process (only if project is grant-funded, for donation easements proceed to step 5) (1-2 years):

- Get Forest Management Plan where necessary (if greater than 20 acres of forest)
- Get signed Landowner Donation letter, authorization letter, agreements
- Staff takes pictures and collects historical information on past property use from landowner
- Staff applies for state and/or federal grants (submit in December)
- State and/or federal grant representatives visit the property in Spring
- Receive notification of funding from state and/or federal grant (generally in summer)

4. Due Diligence (1-2 years):

- Survey - meet with surveyor and landowners on site to finalize house site and farmstead locations. Landowner and staff review preliminary survey and make edits
- Staff orders Phase I Environmental Assessment to be completed by a consultant
- Landowner requests a subordination agreement (if they have mortgage)
- Arrange for title work including determining legal access from public road
- Appraisal - funding appraisal ordered within 60 days of closing to determine easement value and the amount of funding available for easement purchase
- Draft and negotiate the terms of the conservation easement document
- Legal description from surveyor
- Have landowner, attorney and staff review legal documents

5. Baseline Documentation Report

- Staff schedules time for baseline inventory of property, maps and narratives created by staff or hired consultant.

6. Conservation Easement Closing (1 day):

- Record final conservation easement survey
- Landowner signs Conservation Easement Deed and Baseline Documentation Report at closing
- Signed Easement Deed is recorded at the register of Deeds & landowner is paid if easement is grant funded

7. Post-closing (1-2 months):

- Mark conservation easement boundary with BCSWCD Farmland Preservation signs
- Aid landowner with documentation needed for IRS compliance/benefits where possible

Recommendations Before Beginning the Process

Conservation easements are permanent decisions. Our staff is experienced in land protection and can guide you through the easement process. But before a landowner makes significant decisions about their property, he or she should seek tax or legal advice from a professional. We recommend doing the following before starting the process:

- 1. Talk to your partner/spouse/children/siblings** about the easement process and discuss your goals around placing one on your property. Talk to them about why this decision is important to you to try and make sure that you're on the same page about the future of the land.
- 2. Talk to your attorney, financial advisor and/or accountant** –There are financial and legal implications surrounding easements and it is important that you discuss what these might be with whoever handles your finances. While we can provide you with some general information, we are not legal professionals and therefore cannot give you legal/financial advice.
- 3. Contact us** with any questions or concerns that you may have around this process. We are here to help!

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Conservation Easement Landowner Application

1. Name: _____ Date: _____
2. Owned by: Corporation Partnership LLC Individual
3. If owned by corporation, partnership or join entity, name the principal decision-makers:

4. Name of landowner(s) on the deed: _____

5. Mailing address: _____

6. Farm/Property address: _____

7. Phone Number: Home: _____ Cell: _____
8. Email Address: _____
9. Farm Name: _____
10. County Property ID numbers (PIN): _____
11. Deed book/page of property deed: _____
12. Property Acreage: _____
13. Are you interested in placing an easement on:
 - All of the land listed above
 - Part of the land listed above, if a part list the amount: _____
14. How long has the land been owned by your family? _____

15. Tell us about the history of your property. Past uses?

16. Do you have a recent boundary survey for your property?

17. Are there any liens on the title of the property? If yes, please list them below. (Note: this will not automatically disqualify you from the easement – it is just information that is useful for us when planning).

- Mortgage Home Equity loan
 Deed of trust Home Equity Line of Credit
 Other: _____

18. Is your property encumbered with any of the following?

- Covenants Utility easements
 Deed restrictions Easements of sight or record
 Road easements Other: _____

19. Are you currently in Buncombe County’s Voluntary Agricultural District?

- Voluntary Ag District (VAD)
 Enhanced Voluntary Ag District (EVAD)
 Not in the program, but interested in learning more
 Not in program

20. What type of easement are you interested in?

- Full Donation - you still retain full ownership. There is no financial compensation, but you may be eligible for tax benefits.
- Partial Donation - you still retain full ownership. You may receive partial financial compensation for the development rights & may be eligible for tax benefits for the partial donation.

21. Do you own the mineral rights to your property?

22. Is your property in a deferred Present Use Value tax program? If yes, what type of land use?

- Agriculture Forestry
 Horticulture Wildlife Not in program

23. Does your property have legal access? (ex. adjoins a state-maintained road or has legal right of way?)

24. What do you hope to achieve from this conservation easement? (Check all that may apply):

- Create opportunities to enhance existing wildlife, scenic or agricultural resources.
- Create strong conservation restrictions so that the wildlife, scenic or agricultural resources are maintained and not diminished in perpetuity.
- Protect my family farm so it can continue for future generations
- Protect existing resources but allow room for minor development for children/family
- Nearby other protected properties – want to continue/add to the protected landscape
- Tax deductions/benefits
- Keep the property in Present-Use Value tax program
- Avoid Family Conflicts about future uses
- Estate planning and/or planning for the future of the farm
- Other: _____

25. What makes your property good for a conservation easement and what qualities are you interested in protecting? (Check all that may apply and feel free to tell us why this is important to you!).

- Protect open/undeveloped land
 - Keep the property as a working farm
 - Protect wildlife, plant life, water quality, or other special features
 - Protect local history/heritage
 - Other: _____
- _____

26. Are there any plans for adjacent lands that concern you? (subdivision, development, commercial use)

27. Describe the current uses of your property.

- Livestock
- Forestry/timber
- crop/hay production
- Agritourism
- Other: _____

28. What are your plans for the future of the property? Ex. future buildings or changes in land use.

29. Is this project time sensitive? If yes, please explain:

30. Please add any additional comments about your property that you wish to share with us!



Please return by email or mail to:
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