

# Protecting Conservation Easements in Eminent Domain Proceedings

**Presented to  
Environmental Review Commission  
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by  
W. Edward Poe, Jr.  
Board Member, Catawba Lands Conservancy  
On Behalf of the NC Land Trust Council**

# Discussion Points

- I. Sources of Pressure on Infrastructure
- II. North Carolina and Federal Policy
- III. NC Land Trust Public Policy Goals
- IV. Current Test for Exercising Power of Eminent Domain
- V. Legislative Recommendations
- VI. Examples
- VII. Conclusion

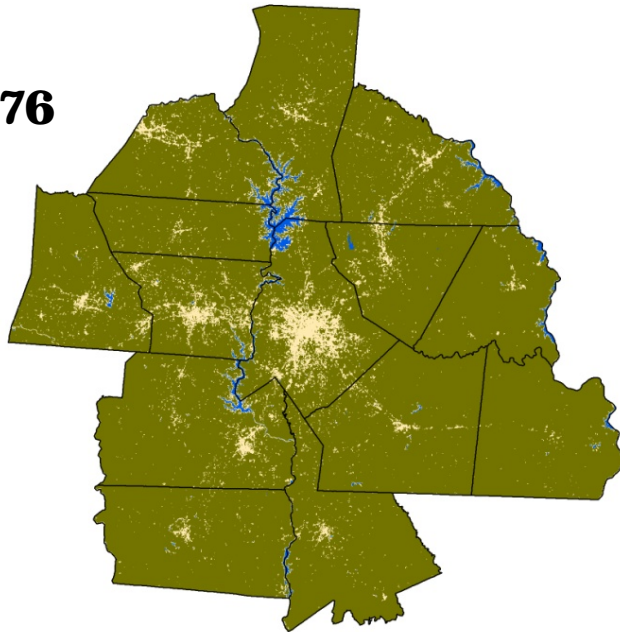
# Population Growth

- NC projected to be 10<sup>th</sup> most populated state by 2010
- NC projected to grow by about 33% in 20 years compared to 18% in US
- NC will become 7<sup>th</sup> most populous state by 2030
- Only CA, TX, FL, NY, IL, and PA will have larger populations

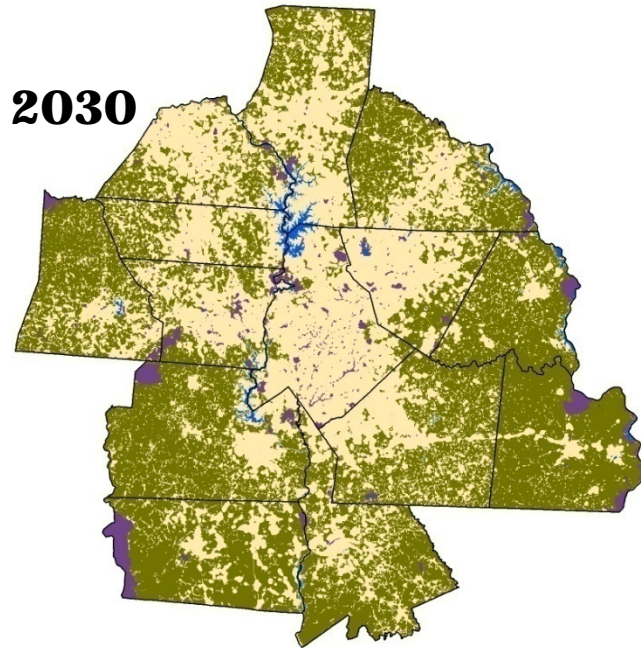
# Vanishing Natural Landscapes

- NC is losing natural areas and farmland at a rate of 100,000 acres per year
- Metro areas under stress; Mecklenburg will have 3% open space by 2030

**1976**



**2030**



# North Carolina Policy

- NC Gen Statute §113A-241(a) – permanently protect an additional 1 million acres by 2010
- Article XIV, Sec. 5 of NC Constitution – State policy to conserve and protect State's land & waters
- NC Gen. Statute §105-130.4 & 105-151.12, et seq. – tax policy encouraging grants of conservation easements
- NC Gen. Statute §121-36 (c) – conservation easements are subject to power of eminent domain

# Federal Policy

- 26 C.F.R. §1.170A-14, et seq. – tax policy encouraging grants of conservation easements

# NC Land Trust Public Policy Goals

- Balance the interest of condemning authorities with the strong public policy favoring conservation easements
- Ensure that public policy supporting conservation easements is not subverted through the condemnation process
- Protect the State's and the public's investment in conservation lands
- Preserve lands under conservation easements without unreasonably limiting the power of eminent domain

# Current Test for Eminent Domain

- Public Purpose
- Imminent public need or benefit
  - Currently, the condemnor's determination is limited only by the “arbitrary, capricious, unreasonable, and an abuse of discretion” test; e.g., the condemnor's selected site/route can be overturned only if the Judge rules it to be “arbitrary”, meaning there were no reasons for the selection
- Payment of just compensation



# Legislative Recommendations

- Threshold finding by a Superior Court Judge – “unavoidable public necessity and absence of a prudent and feasible alternative” require the taking
- Award attorney’s fees and costs to purported condemnee if the Judge does not make the threshold ruling in the condemnor’s favor
- Award of just compensation based on unrestricted fair market value of the easement-burdened land
- 25% mitigation payment to compensate the not-for-profit condemnee for locating and arranging for a substitute conservation easement or using the proceeds in a manner consistent with the conservation purposes of the conservation easement

# Examples

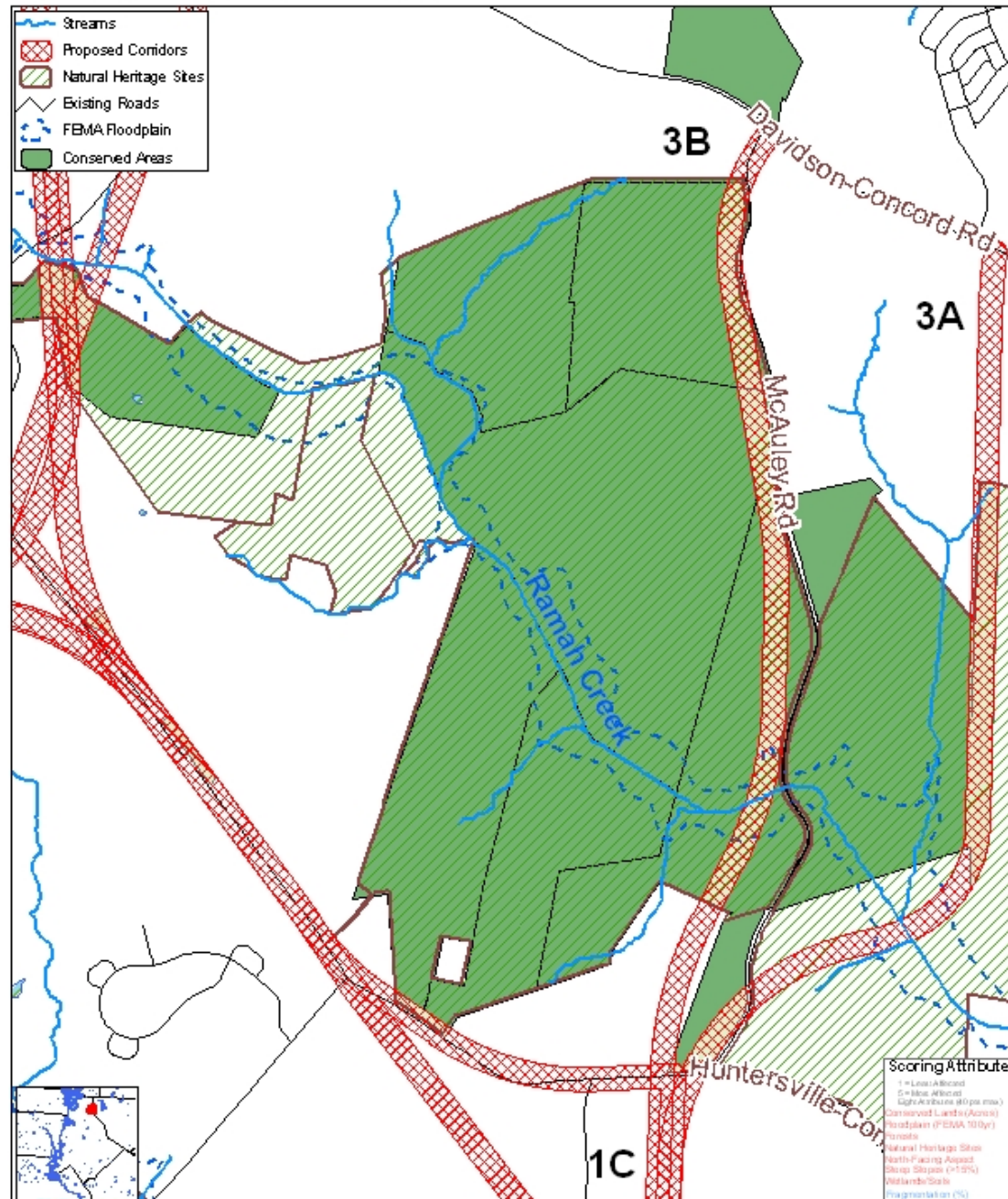
- **Ramah Creek Conservation Area – Town of Huntersville**

# Prosperity Church Road Original Northeast Area

0 1,000 2,000 Feet  
1 inch = 1,000 feet



16 December 2008



# Examples (continued)

- Duke Forest (Blackwood Division) – Orange County

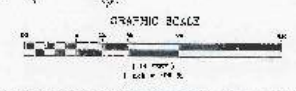


- NOTES:
1. THIS MAP IS INTENDED TO SHOW A CONCEPTUAL SITE DEVELOPMENT FOR FLY 2012.
  2. THE EXISTING CONTOUR MAP WAS ADJUSTED FROM THE 1982 7.5 MINUTE SERIES MAP ISSUED BY THE NORTH CAROLINA DATED 1976, AND ADJUSTED TO CONTAIN THE EXISTING ELEVATION INFORMATION AND SHOULD BE CONSIDERED APPROXIMATE.
  3. THE LOCATION OF THE PROPERTY LINE IS BASED ON ADJUSTED TAX MAPS. IT IS NOT TO BE CONSIDERED A GUARANTEE, AND IT IS SUBJECT TO FUTURE SURVEY DATA.
  4. ORIGINAL MAPS AND CONSTRUCTION DOCUMENTS ARE NOT TO BE USED FOR CONSTRUCTION.
  5. ALL EXISTING UTILITIES ARE INDICATED BY DASHED LINES. EXISTING UTILITIES ARE NOT TO BE USED FOR CONSTRUCTION.

ORIGINAL SITE AREA: 85,143 ACRES  
 AREA RECOMMENDED FOR PURCHASE: 444 ACRES

LEGEND

- EXISTING CONTOUR
- PROPOSED CONTOUR
- EXISTING PROPERTY LINE
- SCALE 1:10,000
- STORMWATER AND SEDIMENT CONTROL AREA
- SEWAGE TREATMENT PLANT
- SEWAGE TREATMENT PLANT
- HOUSE WITHIN THE SITE
- LOT NUMBER
- GEOLOGICAL CONCRETE AREA
- BOUNDARY OFFSET
- EXISTING LAYOUT
- FACTS - I Ring Locations
- Existing FACTS Ring



ORANGE COUNTY LANDFILL  
 ORANGE COUNTY, NORTH CAROLINA  
 CONCEPTUAL SITE DEVELOPMENT PLAN

DRAWING NO. 1

D.O.F. BASEMENT  
 95.61 ACRES

N.A.S.A. BASEMENT  
 501.6 ACRES

ALEXANDER HOGAN PLANTATION  
 (No icon) Register submission pending  
 12.4 ACRES

JOYCE

SCALE  
 1:10,000

PROJECT NO.

# Examples (continued)

- Foy Creek/Taylor Conservation Easement – NC Department of Transportation
  - 140.5 acre conservation easement was donated to NC Coastal Land Trust
  - DOT instituted proceedings to condemn land for a storm water infiltration basin for highway improvements
  - Land Trust opposed because of impacts on water quality
  - With the Land Trust's assistance, another location was found

# Conclusion

- Conservation easements are granted in perpetuity
- Conservation easement holders commit to protect/defend the easements permanently
- Conflicts in policies involving State interests are best resolved by the General Assembly
- Legislation is needed to protect NC's conservation investment in its natural resources and to prevent further loss of NC's forests, farms and open spaces