

# **CONSERVATION EASEMENT PROGRAM ANNUAL REPORT TO THE ENVIRONMENTAL REVIEW COMMISSION**

**Fall 2010**

Pursuant to NC G.S. §113A-235(c), the Department of Environment and Natural Resources reports to the Environmental Review Commission each year on the implementation of Article 16, the Conservation Easement Program. This Article, §113A-230 through §113A-235, includes enabling legislation for a program for conservation easement promotion/education, conservation tax credit promotion/education and quality assurance of conserved lands, and enabling legislation for a conservation grant fund. The following reports on these programs.

**North Carolina Department of Environment and Natural Resources**

<b>Conservation Easement Program G.S. §113A-235 (c), Article 16 (also known as the Conservation Incentives Program) includes three components:</b>		
<b>§113A-230 Conservation Easement Program</b>	<b>§113A-231 Conservation Tax Credit Program</b>	<b>§113A-232 Conservation Grant Fund</b>
Stewardship program monitors state-owned easements, currently Ecosystem Enhancement Program and Conservation Reserve Enhancement Program properties	Certifies donor gifts of interests in real property for conservation purposes	Currently holds funds for DENR Stewardship Program; potentially applicable to other conservation programs

## **THE YEAR IN SUMMARY**

Significant progress has been made in the development and integration of the programs within Article 16 during the past year.

### **Conservation Tax Credit Program**

The number of donations and the estimated value of interest in real property donated for conservation purposes declined during the past year, while the number of acres donated remained roughly the same. For fiscal year 2009-10, 99 applications for certification were approved for the conservation of 12,000 acres, bringing the cumulative acreage to 213,000 acres.

### **Conservation Grant Fund**

This program houses the endowment established to support monitoring and management of wetland and stream mitigation sites, as well as sites protected through the Conservation Reserve Enhancement Program of the Division of Soil and Water Conservation. These monitoring activities are managed by the DENR Stewardship Program. More information about this program is provided below.

### **Conservation Easement Program**

The use of conservation easements continues to grow. The Department of Environment and Natural Resources (DENR) has taken the role of administering the monitoring of Ecosystem Enhancement Program (EEP) preservation mitigation easements. The Stewardship Program director coordinates these monitoring activities, and is advancing several strategies that will increase the program's efficiency and effectiveness. In the past year, DENR expanded these stewardship activities to include monitoring permanent conservation easements for the Conservation Reserve Enhancement Program (CREP). A web-based monitoring tracking database was implemented. Several DENR and non-DENR agencies have expressed an interest in using the application to track property monitoring. The broader category of stewardship, including management for ecological values, remains largely unaddressed.

## **ANNUAL PROGRAM UPDATE**

### **Conservation Easement Program §113A-230**

Established in 1997, this program is intended to use promotion, education and quality assurance to increase the use of conservation easements as a tool to accomplish conservation goals, such as the Million Acre Initiative. The use of conservation easements continues to grow, especially as easements provide a key mechanism for water quality protection used by the Clean Water Management Trust Fund, the Conservation Reserve Enhancement Program and the Ecosystem Enhancement Program. To date, these NCDENR agencies hold approximately 600 conservation easements covering more than 70,000 acres. A working group comprised of representatives of most of the state agencies that utilize conservation easements coordinates agency actions involving easements. Among the goals of the working group is to communicate issues and concerns to each other, and develop consistent responses to common situations. The working group is also making an effort to anticipate and address potential problems, and ensure that the public's investment in conservation is protected into the future.

There is continued growing acceptance of conservation easements within the farming and forestry communities, due to increased incentives provided by several programs. The General Assembly's 2007 legislative changes to G.S. §105-130.34 and G.S. §105-151.12 explicitly identify farmland and forestland conservation as a public benefit for the conservation tax credit. The N.C. Agricultural Development and Farmland Preservation Trust Fund has further promoted easements on working lands. The expanded federal conservation tax incentive (Income Tax Charitable Contribution Deduction) gives particular inducement to farmers and ranchers. As a result, an increasing number of farmland easement donations are being submitted for conservation tax credit certification, accounting for a significant proportion of donations this past year for conservation tax credit (see graph 1 at end of report). However, that trend is expected to slow to some degree, as the federal tax incentive expired December 2009.

### ***Stewardship of Conservation Easements***

With the growing number of conservation easements generated through the Clean Water Management Trust Fund, Ecosystem Enhancement Program, Conservation Reserve Enhancement Program and other programs, comes a growing responsibility for monitoring and effective management of their conservation values. In 2005 the department began taking steps toward funding monitoring activities for DENR-related conservation easements. In 2006 the department established the DENR Stewardship Program. Program funds are generated through payments into the Conservation Grant Fund Endowment to partially offset administrative/management costs. The intent is to expand this endowment and the Stewardship Program incrementally until all conservation easements held by the state are assured proper monitoring and management of their public purposes and values. The monitoring aspect of conservation easements is receiving attention, and from all appearances is moving in the right direction; however, the broader issue of long-term stewardship, including management for ecological values, remains largely unaddressed due to limited financial resources. As the endowment is not sufficient to cover management expenses, the Ecosystem Enhancement Program is providing additional operating funds.

### **Conservation Tax Credit Program 113A-231**

The state's Conservation Tax Credit was established in 1983 to respond to donors' applications for certification of their gifts of interests in real property for conservation purposes. Last year's report highlighted the need to clarify that the recipient of the donation must maintain the property's conservation values. The General Assembly addressed this issue of conservation in perpetuity with House Bill 1829, which clarifies the conservation tax credit's requirement for conservation in perpetuity. The new legislation is changing how donations are reviewed, and potential donors and recipients are encouraged to contact the Conservation Tax Credit program with questions.

#### **Evidence of sustained interest in the N.C. Conservation Tax Credit program:**

- Over the past year, 103 applications were reviewed for eligibility, of which 99 were certified. (Graph 2 shows only 82 projects for 2009, because 17 of the reviews conducted during 2009 were for donations that had been made in other years, primarily 2008).
- The certified projects totaled more than 12,000 donated acres of property interests, worth an estimated \$64 million. (See graphs 3 and 4 at end of report).
- Since its establishment, more than 210,000 acres have been donated, and the applicants have reported to the Conservation Tax Credit program an estimated value of more than \$1 billion for these donations over the duration of the program.
- In an effort to improve the program's customer service and improve the quality of the applications for certification, preliminary review offers an opportunity to exchange information prior to implementing a gift and recording a deed or conservation easement. Seven preliminary reviews were conducted during the past year. Five of the seven preliminary applications were acceptable to reviewers with no changes recommended. One application was withdrawn as the recipient did not confirm intent to accept the property, while another was not completed after questions were raised.

As shown in Graphs 2, 3 and 4, the number of donations and the estimated value of donations of interests in real property declined during the past year, while the number of acres remained roughly the same. The number of acres would have also been significantly less, but for one particularly large bargain sale of 3,176 acres at Grandfather Mountain for a new state park. From 2007 to present, 362 donations have been certified, totaling almost 49,000 acres. The smallest of those was less than one acre, for a public beach access in Dare County. The largest in area during that same time was the previously mentioned 3,176 acre bargain sale. The mean, or average, donation from 2007 to present was 138 acres, and the median was 62 acres. During this same time, 269 of the 362 donations in real property were conservation easements (74 percent); the remaining donations were fee simple gifts.

In response to 2007 legislative changes that clarified public benefits and made other changes to the Conservation Tax Credit Program, agency reviewers have increased their scrutiny of donations. Three applications that were initially disapproved secured approval during the reconsideration process when additional information was provided or the instrument of transfer was amended to strengthen conservation. For the four applications that were not certified to provide public conservation benefit, the reasons for rejection included:

- The donation did not meet the guidelines for conservation of natural areas as that term is defined in G.S. 113A-164.3(3). The natural portion of the protected area was small and fragmented, with the center of the property occupied by artificial clearings, impoundments and buildings, and the forested portions confined to the two sides of the easement area. The property was surrounded by other developed areas, with several houses located near the boundary. No other factors, such as the presence of rare species, existed that would merit additional consideration for the primary public benefit identified by the applicant.
- The donation did not meet the guidelines for fish and wildlife conservation. One of the criteria evaluated is whether a donation protects -- and manages appropriately -- habitat for priority wildlife species identified in the N.C. Wildlife Action Plan. The application provided no specific information on wildlife habitat, no information on priority species using the habitat, and the instrument of transfer was unclear on how habitat would be conserved in perpetuity.
- After reviewing an application where the primary public benefit was identified as watershed protection, the reviewer could not confirm that the property would continue to provide public benefit under the terms of the instrument of transfer. The conservation easement allowed for subdivision and development of housing, outbuildings, utilities and access roads, and was unclear on how much of these land-disturbing activities would be permitted. The conservation easement was also insufficient in protection of riparian buffers, especially for headwater streams.
- Donated property contained natural resources clearly worth conserving, but the instrument of transfer did not adequately protect public benefits. The conservation easement contained multiple retained rights. Cumulatively, the retained rights brought public benefit into question. Compounding this, the conservation easement also left the easement holder without the right of review before the retained rights would be exercised.

One of the perceived strengths of conservation easements is that they are flexible and can be tailored to meet individual landowner's preferences. However, numerous or extensive retained rights within a conservation easement can create a challenge for reviewers, as they evaluate the public benefit of a donation. With multiple rights retained, the reviewers will continue to look for the balance of public benefit and resource protection with the cumulative potential impact of the retained rights. Keeping in mind that the current, well-intentioned landowner will not always own the property, the reviewer must ascertain not only whether the donation provides one or more of the public benefits defined in the legislation, but also if the instrument of transfer adequately protects/conserves the public benefit(s).

The conservation tax credit provides significant benefits to the state, as demonstrated in Graphs 5 and 6. From 2003 to 2008, the CTC program reduced revenue to the state on average \$20 million each year; during the same period the program leveraged donations of conservation land with an estimated value over \$120 million per year – representing a significant savings to the state. And, the conservation tax credit is an effective leveraging tool. When used in conjunction with bargain sales, the conservation tax credit can yield substantial savings for conservation trust funds, local governments and nonprofit organizations purchasing land. At least 230 of the 1,300 certified donations made since the inception of the conservation tax credit have included some bargain sale component. For example, 15 farmland conservation easements in 2009 were bargain sales. Also, Guilford County acquired 700 acres in 2009 through bargain sales, all of which will be used for public access, including 250 acres for the Mountains to Sea Trail. New Conservation Tax Credit application forms are documenting how the conservation tax credit is also being used to leverage multiple funding sources, from federal (e.g. U.S. Department of Agriculture’s Forest Legacy and U.S. Fish and Wildlife Service’s North American Wetland Conservation Program), to state (e.g. Clean Water Management Trust Fund, Conservation Reserve Enhancement Program and Agricultural Development and Farmland Preservation Trust Fund) to local open space funds. For example, in the past year, the Conservation Tax Credit Program helped the above-mentioned conservation funds as well as the Upper Neuse Clean Water Initiative, Durham County and the USDA Farm and Ranchland Protection Program, Buncombe County Land Protection Grants and the Guilford County Parks and Open Space Bond all stretch limited resources further.

The department has the statutory responsibility to protect real property and interests in real property conserved in perpetuity by state incentive programs. Fulfillment of this responsibility requires monitoring of these properties to assure that their conservation purposes are not jeopardized. The new but limited stewardship program discussed earlier under the Conservation Easement Program needs to be expanded incrementally to provide quality assurance for all conserved properties. Staff and resources are stretched thin, but progress is being made. During the past year, advancements toward monitoring conservation tax credit properties include:

- Continued mapping of the conservation tax credit donations certified by DENR. The dataset through May 2009 is available to the public through the NC OneMap database ([www.nconemap.com](http://www.nconemap.com)).
- Maintenance of two databases: one for tracking current applications under review; and, one that contains all projects that have been certified. This second database contains more than 1,300 records, and greatly helps in compiling reports such as this.
- Progress on contacting recipients to ascertain the status of properties, and to ensure that conservation properties are being monitored, and continue to provide public benefits.
- Added case study information for the Web site, under “Conservation Success Stories” ([http://www.onencnaturally.org/pages/Success\\_Stories.html](http://www.onencnaturally.org/pages/Success_Stories.html)),
- Presentation at the N.C. Land Trust Assembly to explain program improvements to the largest constituent group.

Work remains to further refine the Conservation Tax Credit program. One of the primary recommendations from the 2009 Conservation Incentives Program report was to clarify the conservation tax credit's requirement for conservation in perpetuity. In July the General Assembly passed House Bill 1829, the purpose of which, among other things, was to "CLARIFY THAT REAL PROPERTY DONATED FOR A CONSERVATION PURPOSE CAN BE USED ONLY FOR THAT PURPOSE." It became effective in August 2010. To obtain the tax credit, the interest in real property must be "donated in perpetuity for one of the qualifying uses listed in this subsection and accepted in perpetuity for the qualifying use for which the property is donated..." DENR is working to implement this new legislation and a primary task for the upcoming year will be to update relevant Administrative Code.

### **Conservation Grant Fund 113A-232**

The Conservation Grant Fund was established in 1997 to stimulate the use of conservation easements, to improve the capacity of private nonprofit land trusts and agencies to successfully accomplish conservation projects, to better equip real estate-related professionals to pursue opportunities for conservation, and to provide an opportunity to leverage private or other public monies for the stewardship of conservation easements.

In 2005, the General Assembly approved one-time funding in the amount of \$1 million directed to the conservation of land that buffers military bases and training areas with compatible land uses. Sixteen projects were funded, benefiting all North Carolina military installations. The Conservation Grant Fund has proven to be a sound framework for moving conservation projects forward, and it could be utilized to a greater extent, if funding were again available.

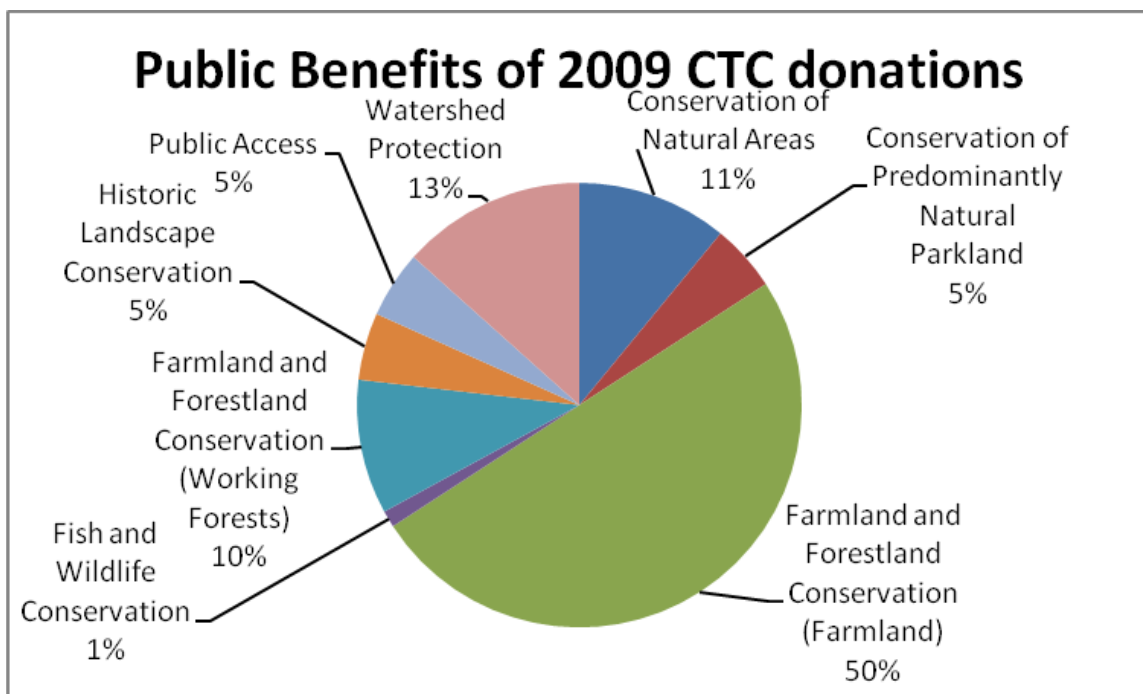
## **CONCLUSION**

The Conservation Incentives Program continues to move forward. We are trying to anticipate some of the future challenges as we tackle the current ones. Changes have been made in the program and how it is administered, especially in regard to the conservation tax credit. As demonstrated in this report, the acquisition of conservation lands is supported by state and local funds, tax incentives and the work of partners and willing landowners. Conservation lands are important for a number of reasons, including quality of life, economic well-being and providing ecosystem services such as clean water. This is important to us, and we will keep working to make sure that the people of the state of North Carolina continue to get these benefits. The help that the General Assembly has given us through legislative clarification is appreciated, and we look forward in turn to continue helping protect North Carolina's valuable natural resources.

## DATA REGARDING N.C. CONSERVATION TAX CREDIT PROGRAM

Graph 1: Primary public benefits for 2009 conservation tax credit donations (under G.S. §105-130.34 and G.S. §105-151.12). Note that most donations provide multiple additional public benefits.

**Graph 1**

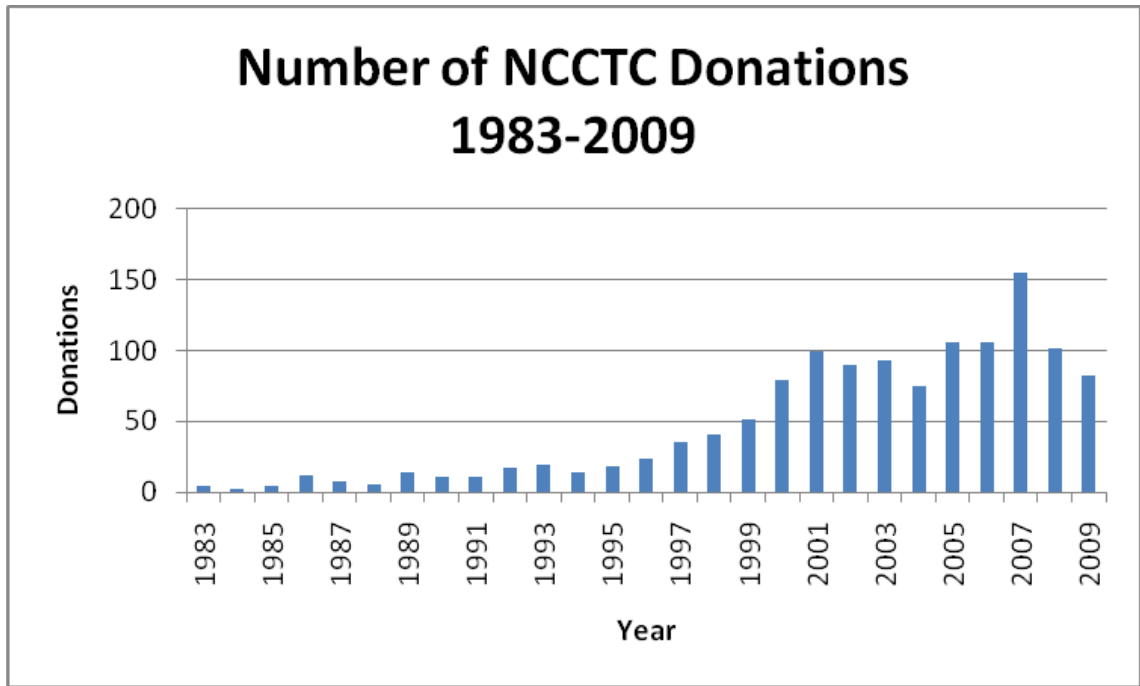




**Graph 2: Cumulative Number of Donations since Inception of NCCTC Program**

Over the past year, 103 applications were reviewed for eligibility, of which 99 were certified. (Graph 2 shows only 82 donations for 2009, because 17 of the reviews conducted during 2009 were for donations that had been made in 2008 or earlier.)

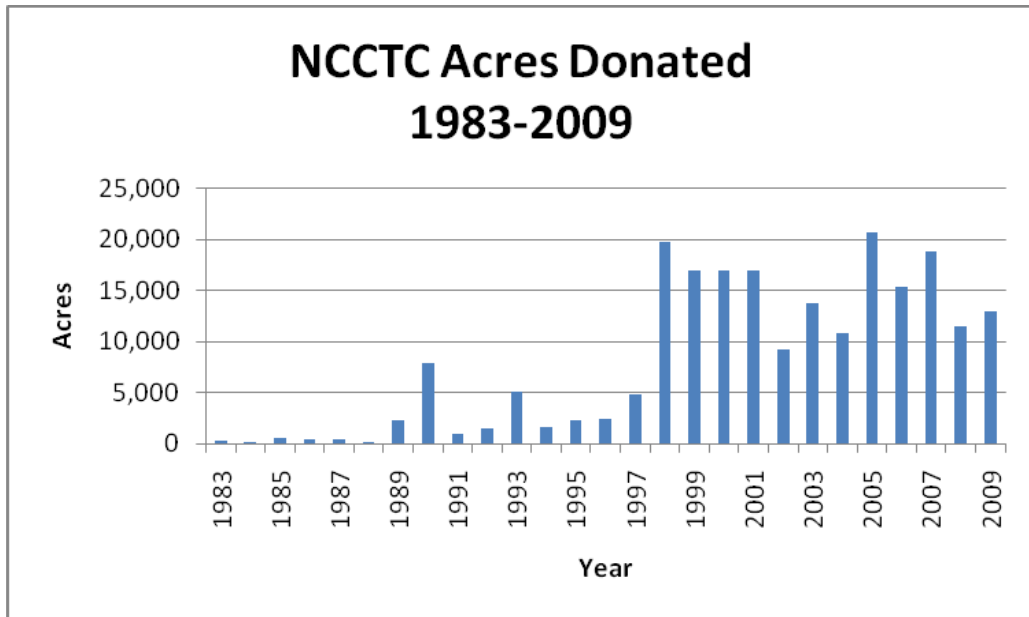
**Graph 2**



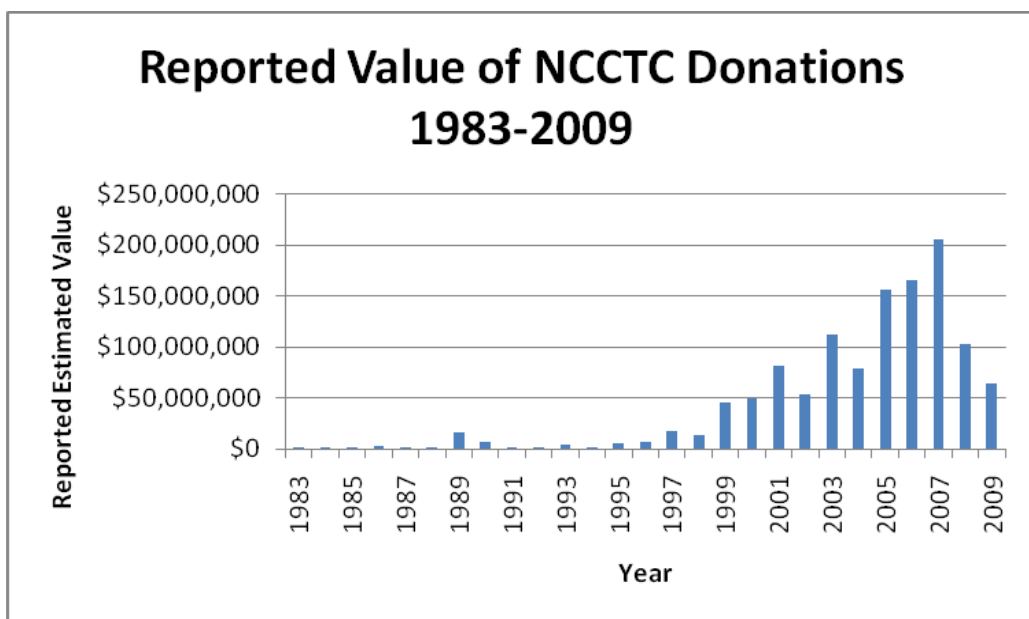
### Graphs 3 and 4: Acreage Donated and Estimated Value over time

For 2009, the certified projects totaled more than 12,000 donated acres of property interests, worth an estimated \$64 million.

**Graph 3**



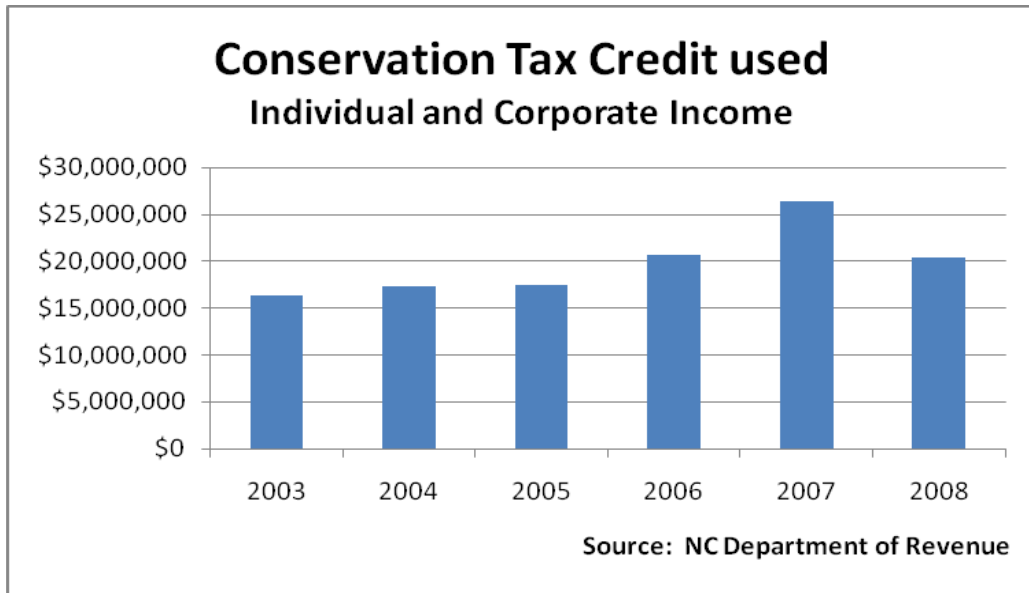
**Graph 4**



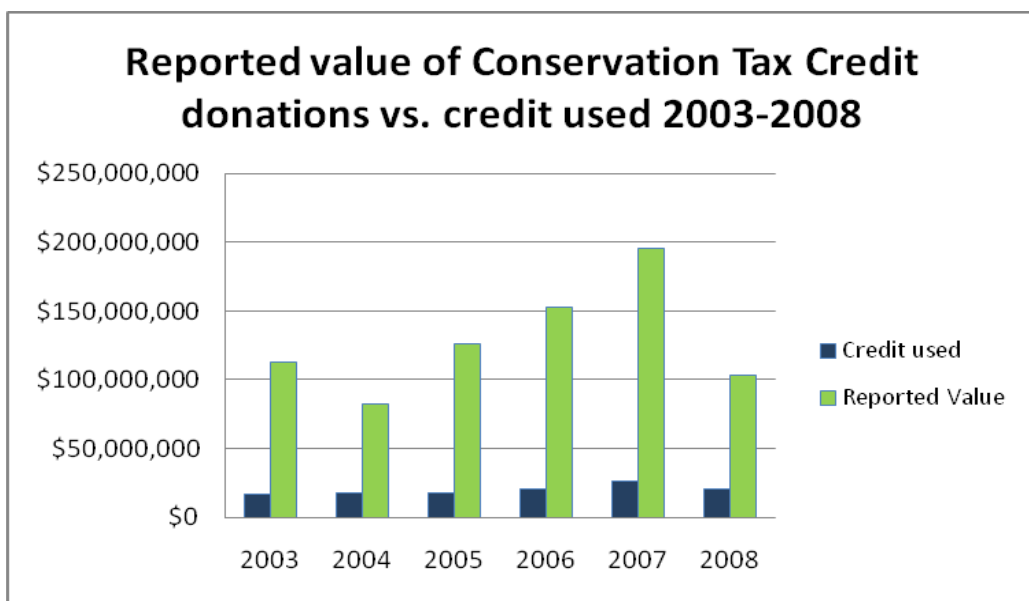
### Graphs 5 and 6: Individual and Corporate Tax Credit Used 2003 – 2008 and Reported Value

These graphs demonstrate the relative value of the Conservation Tax Credit, comparing the actual credit used by donors (Graph 5) and the credit used in comparison to the reported values of the donations (Graph 6)

**Graph 5**



**Graph 6**



**Figure 1**

Distribution of Conservation Tax Credit properties

