



North Carolina Department of Environment and Natural Resources

Beverly Eaves Perdue  
Governor

Dee Freeman  
Secretary

**MEMORANDUM**

TO: ENVIRONMENTAL REVIEW COMMISSION  
The Honorable David Rouzer, Chair  
The Honorable Mitch Gillespie, Co-Chair  
The Honorable Ruth Samuelson, Co-Chair

FROM: Kari Barsness *KKB*  
Director of Legislative and Intergovernmental Affairs

SUBJECT: Report on Conservation Easements

DATE: October 1, 2012

Pursuant to General Statute 113A-235(c), the department shall report on the conservation easement program by October 1<sup>st</sup> of each year. Please consider the attached conservation easement report to satisfy this reporting requirement.

If you have any questions or need additional information, please contact me by phone at (919) 707-8618 or via e-mail at [Kari.Barsness@ncdenr.gov](mailto:Kari.Barsness@ncdenr.gov).

cc: David Knight, Assistant Secretary for Natural Resources  
Linda Pearsall, Director, Office of Conservation, Planning and Community Affairs  
Kristin Walker, Fiscal Research Division  
Lanier McRee, Fiscal Research Division  
Mariah Matheson, Research Division

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

**Fall 2012**

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

## **EXECUTIVE SUMMARY**

Pursuant to G.S. 113A-235(c), the Department of Environment and Natural Resources (DENR) 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. This report reflects activities for fiscal year 2011-12

### **Conservation Easement Program**

The use of conservation easements continues to grow, including for farmland preservation. DENR continues to build capacity for monitoring of conservation easements through the Stewardship Program

### **Conservation Tax Credit Program**

For fiscal year 2011-12, 88 applications for certification were approved for the conservation of 12,000 acres, bringing the cumulative acreage to 232,000 acres. The number of donations of interest in real property donated for conservation purposes increased during the past fiscal year, as did the number of acres donated. The department continues to improve implementation of the tax credit program, including S.L. 2010-167, which clarified the conservation tax credit's requirement for conservation in perpetuity.

### **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. The DENR Stewardship Program manages these monitoring activities.

## **ANNUAL PROGRAM UPDATE**

### **Conservation Easement Program - G.S. 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. 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 DENR 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 use 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.

Acceptance of conservation easements continues to grow within the farming and forestry communities, due to increased incentives provided by several programs. 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, a 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 in December 2011. In response to increased demand for conservation easements for agricultural lands, the DENR was instrumental in the development of the "Working Lands Conservation Easement Guidance Document" for the Soil and Water Conservation Districts. The document is available from the N.C. Association of Soil and Water Conservation Districts or the Conservation Trust for North Carolina.

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

With the growing number of conservation easements generated through the Clean Water Management Trust Fund, Agricultural Development and Farmland Preservation Trust Fund, Ecosystem Enhancement Program, Conservation Reserve Enhancement Program, Forest Legacy and other programs, comes a growing responsibility for monitoring and effective management of their conservation values. 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 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 on private lands for ecological values, remains largely unaddressed due to limited financial resources.

### **Conservation Tax Credit Program - G.S. 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. The Fiscal Year 2009-10 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 S.L. 2010-167, which clarifies the conservation tax credit's requirement for conservation in perpetuity, and helps to protect the public investment. The 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 Conservation Tax Credit Program:**

- Over the past year, 91 applications were reviewed for eligibility, of which 88 were certified. (Graph 2 shows only 70 projects for 2011, because 18 of the reviews conducted during FY 2011-12 were for donations that had been made in other years, primarily 2010).
- The 88 certified projects totaled 12,000 donated acres of property interests, worth an estimated \$67 million. (See graphs 3 and 4 at end of report).
- Since its establishment, the Tax Credit Program has certified 232,000 acres; and the applicants have reported to the Conservation Tax Credit program an estimated value of more than \$1.3 billion for these donations.
- In an effort to improve the program's customer service and improve the quality of the applications for certification, DENR now provides upon request a preliminary review of a potential project as a way to exchange information prior to implementing a gift. Eight preliminary reviews were conducted during 2011-12. Seven preliminary applications were acceptable to reviewers with no changes recommended. On the remaining project, reviewers provided suggestions that would clarify the public benefit, and enhance the ability of the reviewers to certify the project. These suggestions were favorably received and had been implemented when the final application for certification was received.

As shown in Graphs 2 and 3, the number of donations and the number of acres increased during the past year, while the estimated value of donations of interests in real property declined, as shown in Graph 4. The donated property interests from 2007 through June 2012 include 509 donations that have been certified for a range of beneficial conservation projects, totaling more than 67,000 acres. The smallest of those was less than one acre for a public beach access in Brunswick County. The largest was a 3,176-acre bargain sale at Grandfather Mountain for a new state park. The average donation from 2007 to present was 135 acres, and the median was 63 acres. During this same period, 368 of the 509 donations in real property were conservation easements (72 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 received in the 2011-12 fiscal year did not receive initial approval. The reasons the initial resource agency reviewers would not

support certification included: Numerous unspecified homesites retained in the conservation area, as well as associated structures and roads; inadequate riparian buffers; retained rights in conflict with public benefits (e.g. reserved right for hydroelectric generation where the primary public benefit was conservation of natural or scenic river as those terms are used in G.S. 113A-34.). One of the applications was approved in reconsideration, with additional information supplied by grantee. In the second application, an amendment to the conservation easement was approved through reconsideration, and the original donation, taken together with the amendment, was certified. The third was reconsidered, and reviewers have approved a proposed easement amendment. Once this amendment is recorded, it is expected that a revised application will be approved for certification.

One of the recognized 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) after the current landowner has transferred the property.

The conservation tax credit provides significant benefits to the state, as demonstrated in Graphs 5 and 6. From 2003 to 2009 (latest data available from the Department of Revenue), the CTC program reduced revenue to the state on average \$19 million each year; during the same period the program leveraged donations of conservation land with an estimated value of more than \$127 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 275 of the 1,450 certified donations made since the inception of the conservation tax credit have included some bargain sale component. For example, 30 of the 88 transactions reviewed and certified during FY 2011-12 had a bargain sale component, including: conservation easements for farms in Iredell, Orange, Union, Lincoln and Rowan counties; 168 acres to be added to the New River State Park; a 27-acre Browns Island property to be added to a Wildlife Resources Commission Game Land; smaller parcels that will be added to greenways in Durham and Wake counties; a 155-acre parcel to be added to Grandfather Mountain State Park; the first phase of a 474-acre project helping protect Little Pisgah Mountain in Buncombe County; and, a 108-acre natural parkland in Mecklenburg County that will be open to the public. The recently revised Conservation Tax Credit application forms now document that the conservation tax credit is also being used to leverage multiple funding sources, from federal (e.g. USDA Farm and Ranchland Protection Program, USDA Grassland Reserve Program, National Scenic Byways Program), to state (e.g. Clean Water Management Trust Fund,

DOJ Environmental Enhancement Grant, Natural Heritage Trust Fund, Conservation Reserve Enhancement Program and Agricultural Development and Farmland Preservation Trust Fund) to local open space funds, such as in Buncombe County. For example, in the past year, the Conservation Tax Credit Program helped stretch limited resources by supporting projects funded by the above-mentioned conservation funds as well as the Upper Neuse Clean Water Initiative, and private individual and corporate donations to North Carolina land trusts.

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:

- Mapping of the conservation tax credit donations certified by DENR. The dataset through FY 2011-12 is available to the public through the NC OneMap database ([www.nconemap.com](http://www.nconemap.com)).
- Maintaining two databases: one for tracking current applications under review; and, one that contains records of all projects that have been certified. This second database contains more than 1,450 records, and greatly helps in compiling reports such as this.
- Communicating with recipients to ascertain the status of properties, and to ensure that conservation properties are being monitored by the recipient and that the properties continue to provide public benefits. The conservation status of more than 900 properties has been verified. The properties yet to be verified are predominantly those donated to local governments for public access. Work continues on verifying the status of those properties.

In 2010, the General Assembly amended G.S. 105-130.34(a) and G.S. 105-151.12(a), adding language that 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...” To implement this amendment, the Conservation Tax Credit website offers options for the recipient to comply with this requirement.

#### **Conservation Grant Fund – G.S. 113A-232**

To conserve, protect and enhance the natural resources of North Carolina, DENR and related agencies protect restored or high-quality natural areas through easement purchases or fee simple acquisitions. These state-held conservation lands must be managed in perpetuity to protect water quality, wildlife habitat and open space. As noted above, the department has set up the Stewardship Program under the Conservation Grant Fund to ensure responsibility for long-term stewardship of lands with conservation easements held by the state of North Carolina. To protect the ecological integrity of these conservation properties, stewardship activities include:

- monitoring,
- legal protection and enforcement, and
- site-management activities

The Stewardship Program has taken the role of monitoring the Ecosystem Enhancement Program (EEP) mitigation easements. The Stewardship Program director coordinates these monitoring activities, and is advancing several strategies that will increase the program's efficiency and effectiveness. DENR expanded these stewardship activities to include monitoring permanent conservation easements for the Conservation Reserve Enhancement Program (CREP). A web-based monitoring tracking database has been implemented. The Stewardship Program reports annually to the EEP. The reports are available at [http://www.onencnaturally.org/pages/ST\\_Overview.html](http://www.onencnaturally.org/pages/ST_Overview.html).

## CONCLUSION

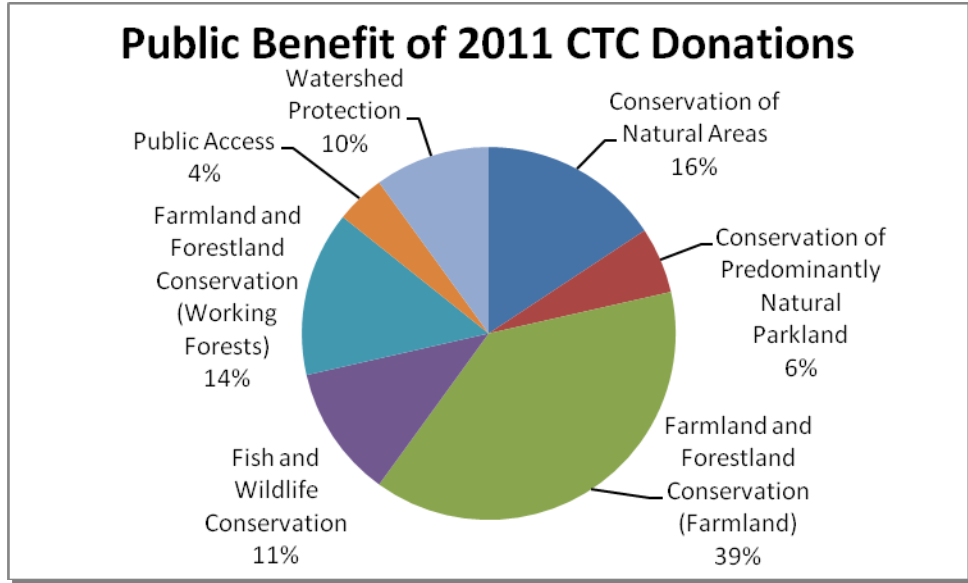
As described in this report, the acquisition of conservation lands is supported by tax incentives and the work of partners and willing landowners. Conservation lands are important for numerous reasons, including improving a high quality of life, supporting economic well-being and providing ecosystem services such as clean water. The Conservation Tax Credit Program will continue working to ensure that tax benefits are provided to those properties that truly provide public benefits.



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

**Graph 1: Primary public benefits for 2011 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.

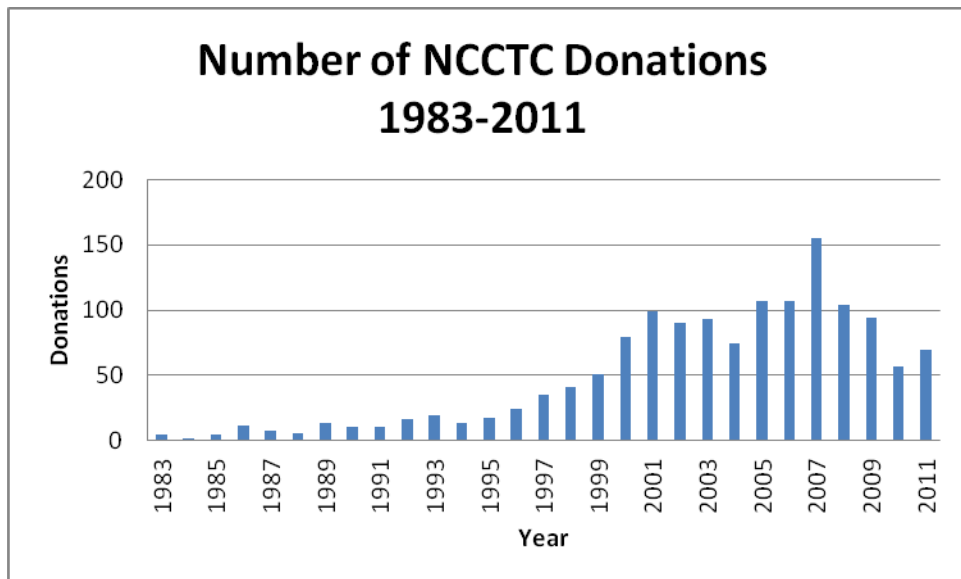
**Graph 1**



**Graph 2: Cumulative Number of Donations since Inception of CTC\* Program**

Over the past year, 91 applications were reviewed for eligibility, of which 88 were certified. (Graph 2 shows only 70 donations for 2011, because 18 of the reviews conducted during 2011 were for donations that had been made in 2010 or other years.)

**Graph 2**

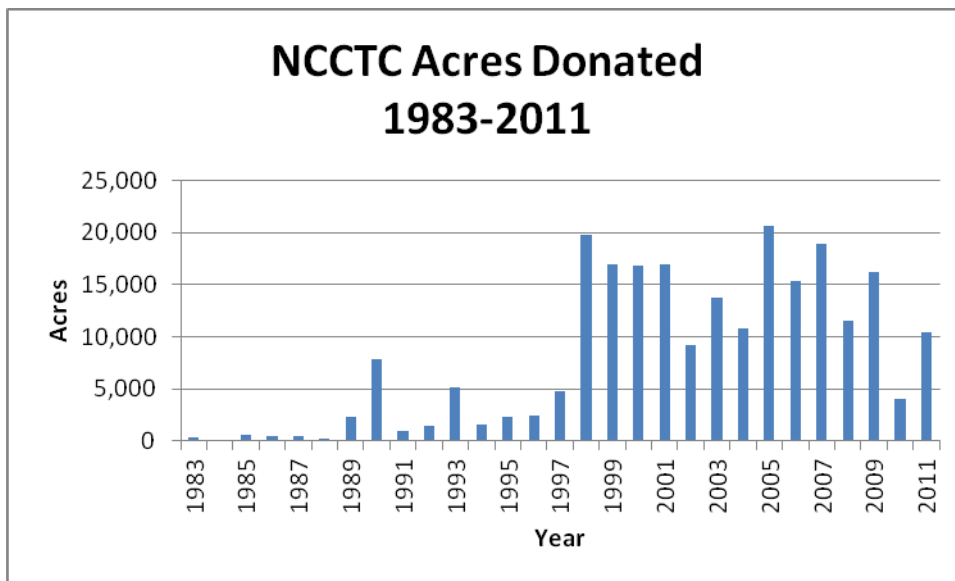


\*Conservation Tax Credit

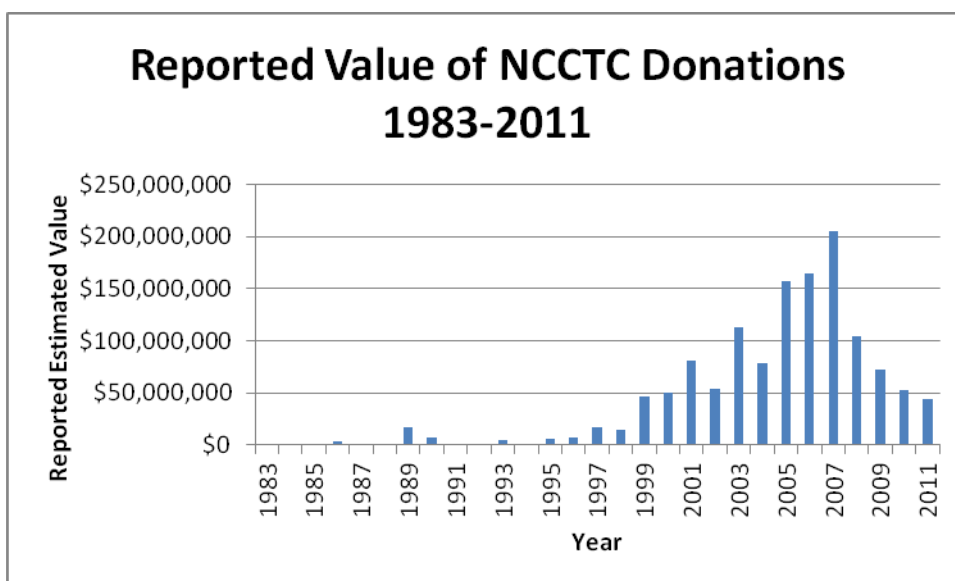
### Graphs 3 and 4: Acreage Donated and Estimated Value over time

For 2011, the certified projects totaled more than 12,000 donated acres of property interests, worth an estimated \$67 million. (Note that some donations reviewed fiscal year 2011-12 were gifted in years other than 2011).

**Graph 3**



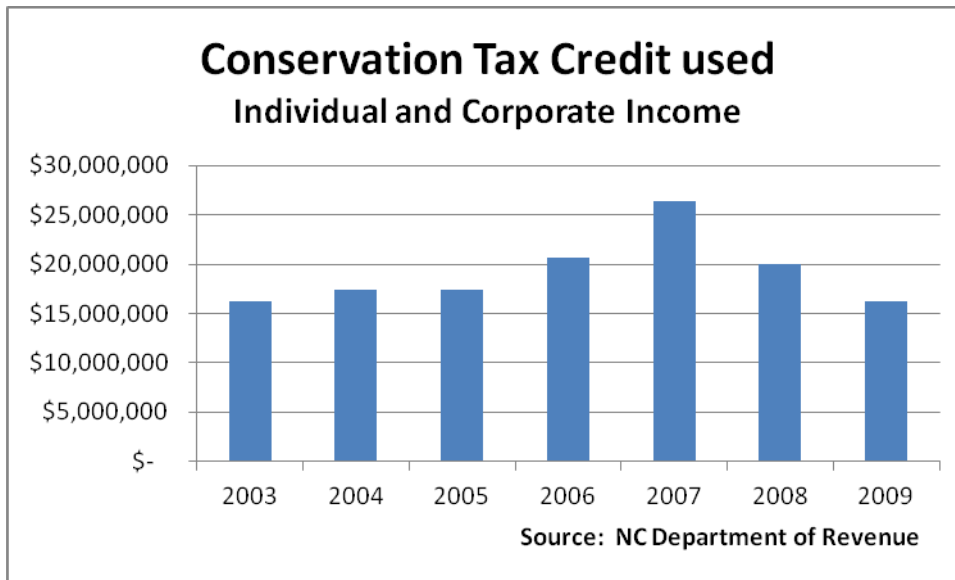
**Graph 4**



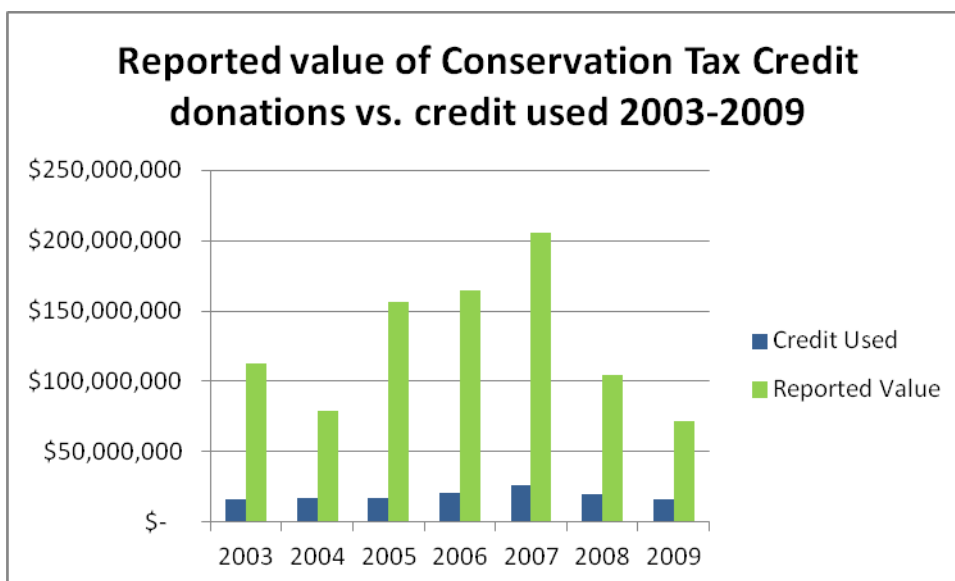
### Graphs 5 and 6: Individual and Corporate Tax Credit Claimed 2003 – 2009 and Reported Value

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

