



North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

November 24, 2014

MEMORANDUM

TO: THE ENVIRONMENTAL REVIEW COMMISSION
The Honorable Mike Hager, Co-Chair
The Honorable Ruth Samuelson, Co-Chair
The Honorable Brent Jackson, Co-Chair

FROM: Neal Robbins, Director of Legislative Affairs

SUBJECT: Conservation Easement Program Report

DATE: November 24, 2014

Pursuant to Pursuant to G.S. 113A-235(c), the Department shall report on the implementation of this Article [16, Conservation Easements Program] to the Environmental Review Commission each year. Please consider the attached as the formal submission this report.

If you have any questions or need additional information, please contact me by phone at (919) 707-8618 or via e-mail at neal.robbs@ncdenr.gov.

cc: Cecilia Holden, Special Assistant to the Secretary
Bryan Gossage, Director of Office of Land and Water Stewardship

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

Fall 2014

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 2013-2014.

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

For fiscal year 2013-2014, 151 applications for certification were approved for the conservation of 24,000 acres, bringing the cumulative acreage to 262,000 acres. The number of donations of interest in real property donated for conservation purposes increased substantially during the past fiscal year, as did the number of acres donated. S.L. 2013-316 authorized the repeal of G.S. 105-151.12 and G.S. 105-130.34, and eliminated the Conservation Tax Credit after 2013.

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. These monitoring activities are supported by the DENR Stewardship Program.

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.

The Department maintains an inventory of conservation easements held by the Department. The 1,312 Department-held easements are tracked spatially by the N.C. Natural Heritage Program. There are 537,000 acres of land encumbered by DENR-held easements, including Clean Water Management Trust Fund, Ecosystem Enhancement Program, and Dedicated Nature Preserves. This information is in the Natural Heritage Program's Managed Area GIS data layer, and is summarized in Table 1. This total does not include easements that have not been digitized, but does contain some conservation easements where the State of North Carolina holds a third-party right of enforcement, but is not the sole or primary grantee.

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, including the N.C. Agricultural Development and Farmland Preservation Trust Fund. As a result, we continue to see a growing number of easements on working lands. (See graph 1 at end of report). As anticipated, the last year of the conservation tax credit again included a significant proportion of projects that conserve farmland and protect family farms.

Conservation Tax Credit - 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. Conservation is vital to North Carolina's economy, particularly the agriculture, tourism and military sectors. The conservation tax credit supported land conservation projects that provide valuable public benefits, including protection and conservation of:

- public access to trails, waters, and beaches,
- watersheds, scenic rivers and drinking water sources,
- family farms and forests,
- fish and wildlife habitat and other natural areas, and
- natural parkland and historic landscapes.

Numbers for the Conservation Tax Credit FY 2013-2014:

- Over the past year, 151 applications were reviewed for eligibility, and all 151 were certified. (Graph 2 shows only 143 projects for 2013, because eight of the reviews conducted during FY 2013-14 were for donations that had been made in other years, primarily 2012).
- The 151 certified projects totaled 24,000 donated acres of property interests, worth an estimated \$176 million. This represents the highest number of annual acres in the history of the conservation tax credit (See graphs 3 and 4 at end of report).
- Since its establishment, 262,000 acres have been certified by the Department of Environment and Natural Resources; and the applicants have reported an estimated value of more than \$1.5 billion for these donations.
- In an effort to improve the program's customer service and improve the quality of the applications for certification, DENR has provided upon request a preliminary review of a potential project as a way to exchange information prior to implementing a gift. Sixteen preliminary reviews were conducted during 2013-14, including some the last two weeks of the calendar year. Ten of the preliminary applications were acceptable to reviewers with no changes recommended. One applicant was informed that resource agency reviewers would not support certification, as the donation would not provide a statutory public benefit. Reviewers provided suggestions for the remaining five potential projects that would clarify the public benefit or how the public benefit would be protected. In previous years, suggestions such as these have been favorably received, and had been implemented when the final applications for certification were received.

As shown in Graphs 2 and 3, the number of donations and the number of acres increased substantially during the past year. Understandably, the estimated value of donations of interests in real property also increased, as shown in Graph 4. The donated property interests from 2007 through September 2014 include 700 donations that have been certified for a range of beneficial conservation projects, totaling over 91,000 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 131 acres, and the median was 60 acres. During this same period, 511 of the 700 donations in real property were conservation easements (73 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 increased their scrutiny of donations. The General Assembly addressed the issue of maintaining a property's conservation values with S.L. 2010-167, which clarified the conservation tax credit's requirement for conservation in perpetuity, and helps to protect the public investment. It is worth noting that this law and earlier legislative changes strengthened the public benefit of the conservation tax credit and helped resource agency reviewers improve implementation, as DENR worked with stakeholders and other agencies - including the Department of Justice - to respond to changes in the most effective manner.

Only two applications received in the 2013-14 fiscal year did not receive initial approval, and DENR communicated the reasons reviewers could not support certification to the applicants. In one case, the donor retained the right to receive the benefit of development density credits, which is prohibited by G.S. 105-151.12 and G.S. 105-130.34. The conservation easement was amended to relinquish this right, and reviewers supported certification. In the other case, the recipient encumbered the donated property with a third-party conservation easement to comply with S.L. 2010-167 and ensure that the public benefits would be conserved in perpetuity, and the fee simple donation was subsequently certified.

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 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 underlying the easement, 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 resource agency reviewers have worked diligently on all aspects of the conservation tax credit review process, and deserve recognition for their work to protect and steward natural and cultural resources, and taxpayer dollars, as well as their contribution to providing excellent customer service. The Department of Justice should also be recognized for the assistance provided to DENR in administering the conservation tax credit.

The conservation tax credit provides significant benefits to the state, as demonstrated in Graphs 5 and 6. From 2003 to 2011 (latest data available from the NC Dept. of Revenue), the CTC program reduced revenue to the state on average \$17.5 million each year; during the same period the program leveraged donations of conservation land with an estimated value over \$114 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, in which the property is sold for less than market value, the conservation tax credit can yield substantial savings for conservation trust funds, local governments and nonprofit organizations purchasing land while providing tax benefits for the donor. At least 333 of the 1,670 certified donations made since the inception of the conservation tax credit have included a bargain sale component. For example, 37 of the 151 transactions reviewed and certified during FY 2013-14 had a bargain sale component, including: conservation easements for farms in Jackson, Nash, Alamance, Davidson, Buncombe, and Gaston Counties; 238 acres that were added to a new Game Land in Bladen County; 271 acres for the Pond Mountain Game Land in Ashe County; 152 acres for the Waxhaw Creek Preserve in Union County (a portion of which will be crossed by the Carolina Thread Trail); multiple projects (over 600 acres) that will maintain the rural and natural character of the Blue Ridge Parkway; 409 acres that will contribute to wildlife habitat in the Mackay Island National Wildlife Refuge; smaller parcels that were

added to local parks and greenways in Mecklenburg, Randolph, Orange and Wake Counties; and, two projects that will conserve working forests, water quality, and natural habitats on just under 800 acres while buffering the military training mission at Marine Corps Air Station Cherry Point and Marine Corps Base Camp Lejeune. All of the park, greenway, game lands and wildlife refuges will be open to the public. The Conservation Tax Credit application forms document that the conservation tax credit has also been used to leverage multiple funding sources. In the past year that included: federal sources (e.g. USDA Farm and Ranchland Protection Program, Department of Defense, National Scenic Byways Program); 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); local open space funds, such as Buncombe County's; and, private donor funds.

The NC Department of Environment and Natural Resources 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. 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 2013-14 is available to the public through the NC OneMap database (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. Data analysis from the first reveals that the average review time for resource agency reviewers FY 2013-14 was 14 days. The second database contains more than 1,668 records for certified tax credit donations, and greatly helps in compiling reports such as this.

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. To protect the ecological integrity of these conservation properties, stewardship activities should include:

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

CONCLUSION

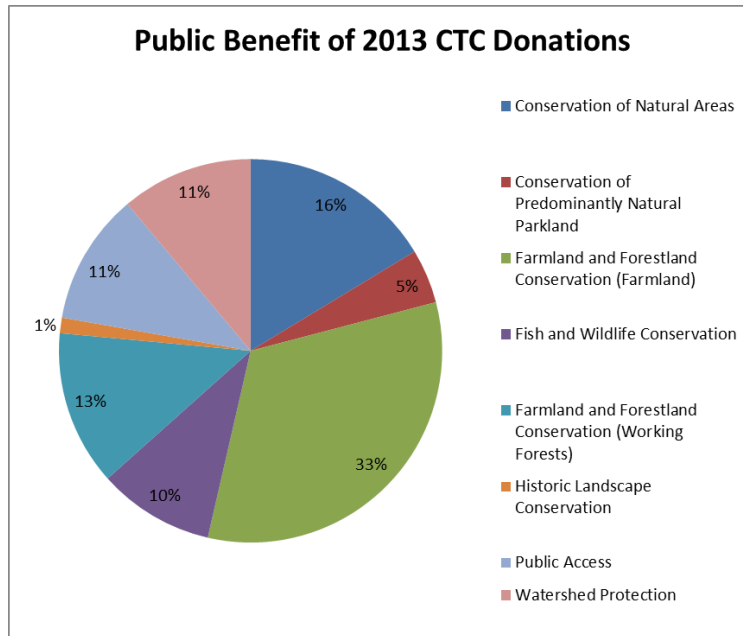
As described in this report, the acquisition of conservation lands has been supported by tax incentives and the work of partners and willing landowners. S.L. 2013-316 repealed

G.S. 105-151.12 and G.S. 105-130.34, and eliminated the conservation tax credit effective January 1, 2014. The Department of Environment and Natural Resources will review for certification the remaining 2013 tax credit applications as they arrive, working to ensure that individuals seeking tax benefits are provided services as needed. DENR will continue efforts to assure the quality of conserved lands, as well as utilizing the tool of conservation easements to provide public benefits.

DATA REGARDING N.C. CONSERVATION TAX CREDIT

Graph 1: Primary public benefits for 2013 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.

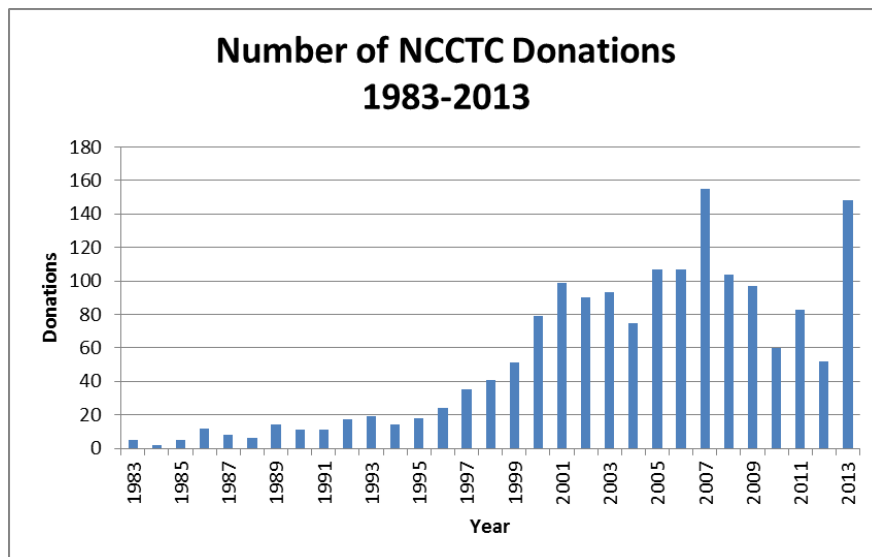
Graph 1



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

Over the past year, 151 applications were reviewed and certified. (Graph 2 shows only 143 donations for 2013, because 8 of the reviews conducted during 2013-14 were for donations that had been made in 2012 or other years.)

Graph 2

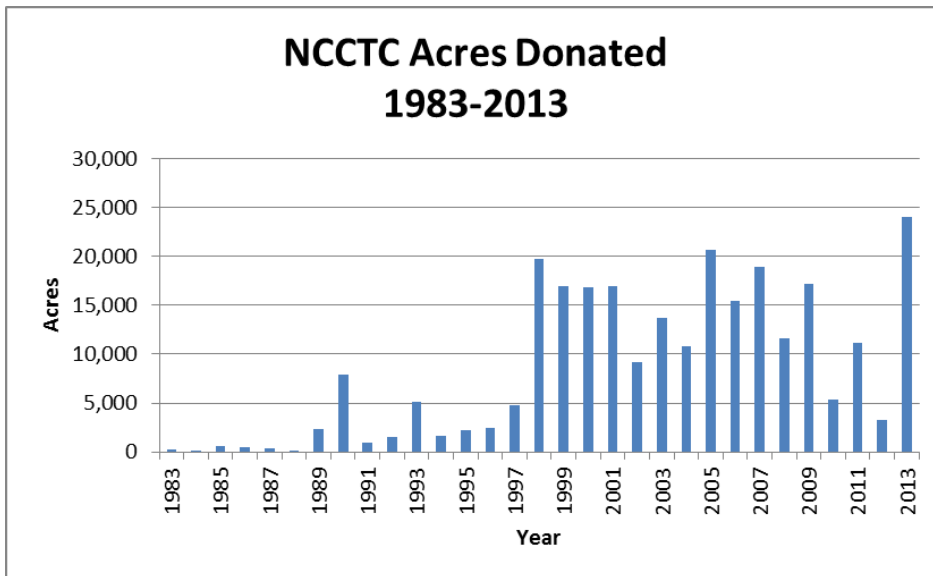


*Conservation Tax Credit

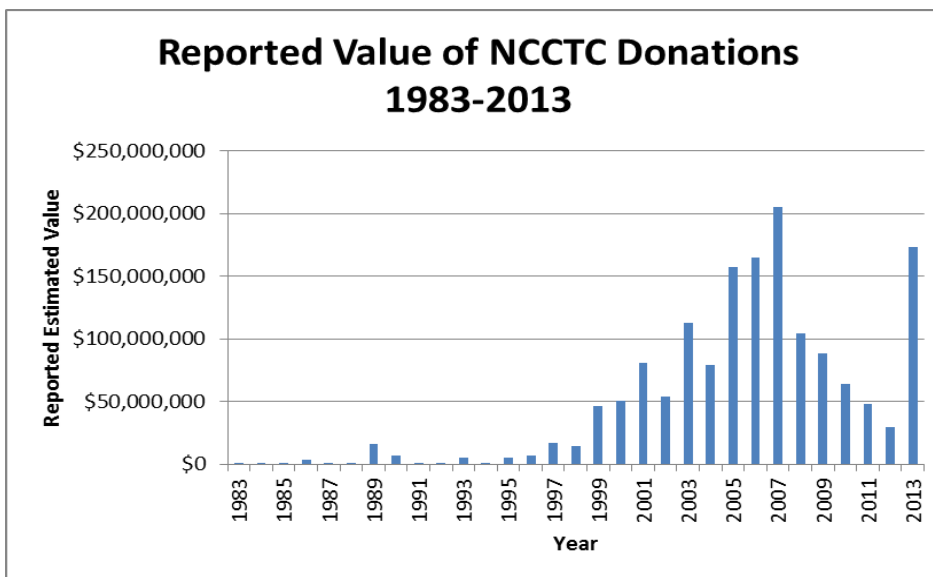
Graphs 3 and 4: Acreage Donated and Estimated Value over time

For 2013, the certified projects totaled more than 24,000 donated acres of property interests, worth an estimated \$176 million. (Note that some donations reviewed fiscal year 2013-14 were gifted in years other than 2013).

Graph 3



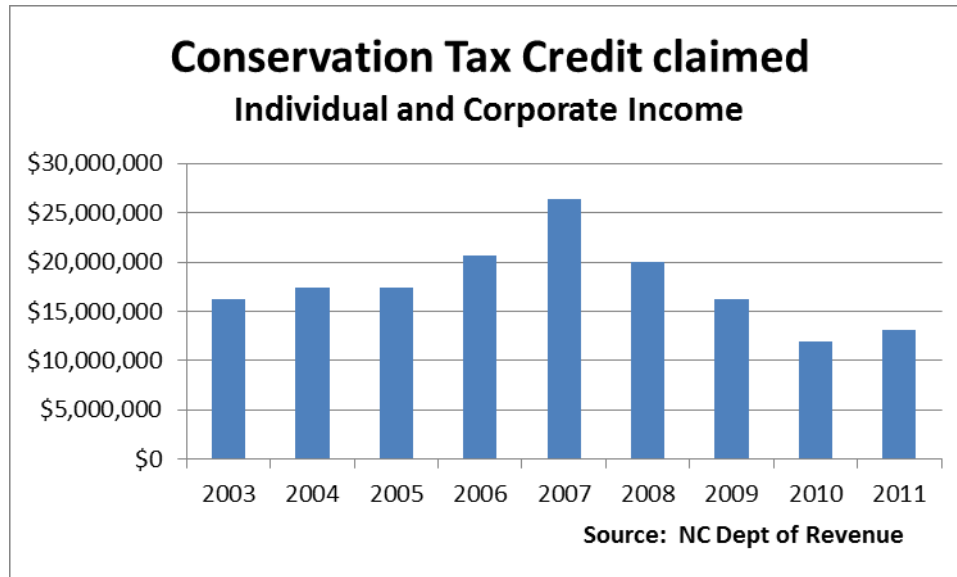
Graph 4



Graphs 5 and 6: Individual and Corporate Tax Credit Claimed 2003-2011 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). Note that any unused portion of the conservation tax credit may be carried forward for the next succeeding five years.

Graph 5



Graph 6

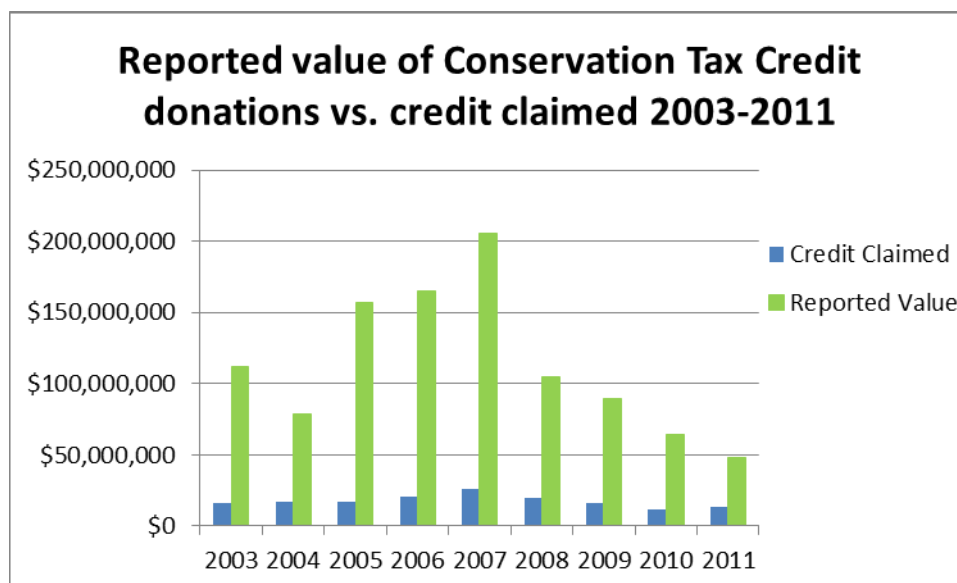


Table 1: Conservation easements held by the N.C. Department of Environment and Natural Resources, September 2014

Managed Areas from NCNHP Managed Area GIS data layer	Number of Easements	Acres
NC Clean Water Management Trust Fund Easement	624	76,853
NC Dedicated Nature Preserve (G.S. 113A-164)	134	383,796
NC Department of Cultural Resources Easement	1	442
NC Department of Environment and Natural Resources Easement	1	238
NC Division of Parks and Recreation Easement	1	719
NC Ecosystem Enhancement Program Easement	551	75,948
TOTAL	1,312	537,996