

Reviewer Guidelines for Conservation Tax Credit Certification

The General Statutes (G.S. 105-130.34 and G.S. 105-151.12) require that the North Carolina Department of Environment and Natural Resources (DENR) must certify that the donated property is suitable for one or more of the valid public conservation benefits and the interest in property must be donated in perpetuity to and accepted in perpetuity by the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and qualified to receive charitable contributions.

For the public's convenience, we provide certain guideline or template documents as follows. However, there is no absolute requirement that these documents be used. Each application will be reviewed on a case-by-case basis under the criteria of NC General Statutes §105-130.34 and §105-151.12.

Donations must serve a public benefit that is useful for:

1. Public beach access or use,
2. Public access to public waters or trails,
3. Fish and wildlife conservation,
4. Forestland or farmland conservation,
5. Watershed protection,
6. Conservation of natural areas as that term is defined in G.S. 113A-164.3(3),
7. Conservation of natural or scenic river areas as those terms are used in G.S. 113A-34,
8. Conservation of predominantly natural parkland, or
9. Historic landscape conservation

The process used for reviewing conservation tax credit applications:

1. Application for certification received.
2. Copies of the application are distributed to the appropriate resource agency reviewer, based on primary conservation purpose, as either noted by the applicant or stated in the instrument of transfer. In addition, one copy goes to the state Attorney General's office.
3. If a reviewer determines that a property does not qualify for certification under the public benefit identified in step 2, the applicant will be notified in writing. The applicant may then request reconsideration of the project.
4. If reconsideration is requested, the Assistant Secretary will reconsider, among other things, the application in light of the full range of public benefits in G.S. 105-1151.12 and G.S. 105-130.34 and any new information provided by the applicant.

To determine if the donation will receive certification, DENR reviews applications with two questions in mind:

1. Does the donation provide one or more of the public benefits listed above?
2. Does the instrument of transfer adequately protect/conservate public benefit(s)?

What do reviewers look for in applications?

Specific reviewer guidelines are provided below that correspond to public benefits, so please check those first. In addition, clear and straightforward Instruments of Transfer are not only helpful in the review process, but also should make it easier to monitor and steward the conservation property in perpetuity. Where there are retained rights, the reviewers look for a balance that provides adequate conservation of the environment and natural resources.

Other things that get extra scrutiny from reviewers and could prevent certification:

- Reserved home site and/or subdivision resulting in fragmentation
- Inadequate conservation of water quality or other sensitive/important habitats
- Retained rights which could or would degrade conservation value if exercised
- Provisions for alteration in retained rights (e.g. conversion of existing forested habitats to agricultural purposes, or conversion of agricultural land to developed areas; impoundments of free-flowing streams)
- Retained rights with potential off-site impact, such as changes to natural hydrology
- Retained rights with no review by grantee
- Size, shape and configuration of conservation area
- Multiple retained rights, or retained rights to actions at unspecified locations. In these cases, the reviewers must assume the worst-case scenario in regards to how the public benefit would be protected when the rights are exercised.
- Substitution of property is not reviewed favorably. The conservation intent of donation would imply that important resources are protected from the beginning.

Can a home site be reserved within the conservation area and still get the tax credit?

This is a difficult question, but the reviewers have worked to identify an approach to take in this regard. This general rule for a reserved home site is used, in order of preference:

1. Prefer to exclude the reserved home site from the conservation area.
2. In the cases where there is some practicality for a home site to be within the conservation area, and the home site is reserved in the corresponding easement, reviewers prefer that the location be specified. Reviewers will examine location, footprint/envelope, impervious surface, building square foot/height, as well as reservations for access road and utilities and other associated retained rights. Prescribed caps or limits will help reviewers evaluate impact on conservation values. Reviewers would expect impact to be minimal, and the recipient (easement holder) to have right of review before construction.
3. Easements where a home site is reserved in the conservation area, but the location is not identified as part of the conservation easement will be evaluated as if the future home site will be located in the least ideal location (e.g. prime farm fields, within stream buffers, on rare plant populations, or situated to maximize fragmentation of wildlife habitat).

Some programs have a rule of thumb for the number of reserved home sites (e.g., for the USDA Farm and Ranchland Protection Program, one home site is allowed per the average size farm in the area, which usually translates to one home site per 50-100 acres). Of course, fragmentation

is a great concern for wildlife habitat, so home sites will be carefully evaluated in non-farmland projects.

Public benefits (conservation values) must be protected in perpetuity:

In order to qualify for conservation tax credit, the conservation values of the property must be protected in perpetuity. Adequate protection of land requires ownership or oversight by an organization or entity whose mission is to protect the significant conservation values, and provision for such oversight in perpetuity. The public benefit of a transaction can be lost if the conditions of the agreement are not maintained into the future. For both fee simple and conservation easement donations, the recipient should have the ability to monitor and defend the conservation lands, and must be committed to retaining the public benefits. This type of review may be out of the purview of the resource agency reviewers, such as the Natural Heritage Program, so it will likely be incumbent on the Department of Revenue and Department of Environment and Natural Resources to ensure, to the extent possible under the General Statutes, that recipients are qualified and have sufficient resources to monitor, manage and/or defend conservation lands.

The sections that follow detail the donation guidelines for the review of Conservation Tax Credit applications for each of the nine public benefits designated in G.S. 105-130.34 and G.S. 105-151.12.

Donation Guidelines for Review of Applications for:

- 1. Public Beach Access or Use and/or**
- 2. Public Access to Public Waters or Trails**

The Division of Coastal Management is one of two primary reviewers for Conservation Tax Credit applications where the donation is to serve a public benefit that is useful for Public Beach Access or Use and/or Public Access to Public Waters or Trails.

The North Carolina Division of Parks and Recreation is the other primary reviewer of applications that involve Public Access to Public Waters or Trails. The Division of Parks and Recreation looks for the general public's access to public waters or public trails to be protected, substantial, and regular.

The N.C. Division of Coastal Management administers the N.C. Coastal Program under the authority of the N.C. Coastal Area Management Act (CAMA). According to CAMA, "*Public purposes would be served by providing increased access to ocean beaches, public parking facilities or other related public uses.*" The public has traditionally and customarily had access to enjoy and freely use the ocean beaches and estuarine and public trust waters of the coastal region for recreational purposes and the State has a responsibility to provide continuous access to these resources. It is the policy of the State to foster, improve, enhance and ensure optimum access to the public beaches and waters of the 20-county coastal region. The provision of access sites is to be consistent with rights of private property owners and the concurrent need to protect important coastal natural resources such as sand dunes and coastal marsh vegetation.

It is under this authority that the Division of Coastal Management will focus on and be the principal reviewer of donations under the N.C. Conservation Tax Credit Program citing 1) Public Beach Access and Use, and 2) Public Access to Public Waters as a public benefit.

The Division of Coastal Management will give a favorable review to properties meeting the following guidelines:

1. Waterfront property donated to a local unit of government for the purpose of establishing a new or expanding an existing public beach or coastal waterfront access within the 20 coastal counties designated by CAMA.
2. Unbuildable waterfront property due to federal, state or local regulation donated to the state of North Carolina or a local unit of government that would provide legal public access to ocean beaches or public waters within the 20 coastal counties designated by CAMA.
3. Unbuildable waterfront property due to federal, state or local regulation donated to the state of North Carolina for the provision of open space within the 20 coastal counties designated by CAMA.
4. Easements across private waterfront property that would provide legal public access to ocean beaches or public waters within the 20 coastal counties designated by CAMA.
5. Non-waterfront property donated to a unit of government for the purpose of establishing parking for a new, or expanding parking at an existing public beach or coastal waterfront access within the 20 coastal counties designated by CAMA.
6. Property that has been identified in a state or locally adopted open space plan that provides access to public trust waters of the state within the 20 coastal counties designated by CAMA.

Donation Guidelines for Review of Applications for:

3. Fish and Wildlife Conservation

The North Carolina Department of Environment and Natural Resources will primarily request the assistance of the North Carolina Wildlife Resources Commission in review of applications for Fish and Wildlife Conservation. The Natural Heritage Program (NHP) will also review applications submitted for the purposes of Fish and Wildlife Conservation (specifically rare species and their habitats) and/or Conservation of Natural Areas. [See Section 6. Conservation of Natural Areas for these criteria.]

The Wildlife Resources Commission (WRC) will review project applications with two basic objectives:

1. The first will be to determine if the project comprises a public benefit in the form of fish and wildlife conservation. To meet this criterion, the conservation values upon implementation of the easement or fee simple donation must be equal to or greater

than the conservation value of the property prior to the transaction. If values are diminished, the application will receive a negative evaluation.

2. The second objective is to establish if the project will provide the benefits in perpetuity.

If either of these is negative, then the application will not be supported by WRC.

The WRC will consider factors that may qualify a donation for public benefit, as well as the factors that can disqualify a donation. Although public access criteria do not necessarily apply to all situations relating to the *fish and wildlife conservation* category, there will be instances in which this will be considered. Some uses of properties that are being considered on this basis include public access for recreation (boating, hunting, and fishing), scientific research and wildlife observation.

Applications to be reviewed will include both fee simple donations and conservation easements:

Fee simple donations have fewer issues, and previously the majority has been certified under the public access criteria for public benefit. WRC staff will examine fee simple donations on those issues that are relevant.

Easements have proven more difficult to assess for public value, especially in those cases that do not include public access. In most cases, the WRC staff focuses on two criteria under defined public benefit -- *fish and wildlife conservation*; and *public access to public waters or trails* -- in evaluating easements and applicable fee simple donations. WRC staff interprets the legislated criteria to mean public benefit for all North Carolinians, emphasizing elements that have a broad positive impact, such as protection of water quality and maintenance of habitats necessary for the long term preservation of North Carolina's native wildlife resources. WRC staff considers the following criteria as minimum guidelines for most easements, all of which must apply:

- Greater than 25 acres of contiguous priority habitat for native species (see exceptions below)
- Protection and management of habitat for priority wildlife species identified in the *North Carolina Wildlife Action Plan (NCWAP)* developed by the WRC (see website: http://www.ncwildlife.org/fs_index_07_conservation.htm).
- Limited impacts from retained commercial interests
- Provisions for stewardship in perpetuity

Size and Contiguity of Property

In most cases, WRC recognizes public benefit on tracts greater than or equal to 25 acres of contiguous, un-fragmented high priority habitat. WRC will more carefully scrutinize areas of less than 25 acres, as well as larger areas with roads and multiple parcels exempted from the easement. Areas that are smaller, are discontinuous, or that have convoluted shapes are subject to intense edge effects and provide habitat value for fewer species. While the 25 acre minimum refers to contiguous area of priority habitat, an easement or fee simple donation smaller than 25 acres could be considered acceptable if one or more of the following criteria are met:

- The property is adjacent to existing conservation properties protected by fee or easement ownership, connected by high quality habitat corridors or closely clustered with other such parcels. Note that the decision will be based on the

proposed/completed donation presented in the application. The *potential* of the property to be closely clustered with conservation properties is a secondary consideration. For instance, if the prospective donor has the ability to enlarge the size of the easement area through acquisition, encouragement of neighboring donations or other means, this information may be taken into account.

- The easement would protect special resources such as outstanding examples of wildlife habitats identified as priorities in the *North Carolina Wildlife Action Plan*, endangered or threatened species habitat (including state listed endangered, threatened, or special concern species), or ecologically significant natural areas.
- In cases where the natural condition of the property is other than forested land, the minimum acreage might go up or down, depending on the habitat. For instance, a 100-acre minimum may be desired for a salt marsh, but only 5 acres for high quality prairie, mountain bog or mountain bald.

Applications will be reviewed on a case-by-case basis and recommendations will be based on the total public benefit (in the form of conservation values) to be derived from the easement or fee simple donation.

Protection of Significant Wildlife Species and Important Ecological Areas

The WRC will evaluate applications to see whether priority wildlife species or habitats are protected. Applications must provide a sufficient description of the habitat (including dominant plant species composition, age, condition and surrounding land use) to facilitate evaluation. Applications authorizing actions that fragment habitat, disrupt ecological integrity, (e.g. construction of septic tanks in conserved area) or otherwise harm significant wildlife habitats may not receive WRC support. Applications in which the landowner demonstrates the intention and ability to manage the land for wildlife benefit, where appropriate, will be looked upon favorably.

Riparian, Floodplain and Wetland Protection

Protection of the riparian area and floodplain should extend at least 300 feet landward from bank full. Terms of the easement should include keeping the floodplain and riparian area undisturbed on both sides of a stream as applicable.

WRC will evaluate applications and determine public benefit based on the size of buffer and nature of adjacent activity, to make sure that the wetlands are well protected.

Impacts of Retained Commercial Interests

At some point, potential public benefit of a donation is substantially diminished by activities which either led to the current condition of the property or are ongoing in perpetuity as part of the landowner's negotiated easement. For example, golf courses, ski facilities and other semi-developed areas provide negligible habitat, can lead to degradation of resources and the public must pay to access the area. Intensive forestry operations and excessive pine straw raking also utilize the land in such a way that native species and communities are often degraded or removed.

The WRC is not opposed to landowners profiting from their land. In fact, the leasing of hunting or fishing rights is notable in that many game species require habitats that are increasingly rare,

such as wetlands, areas with periodic fire, and clean and free-flowing waters. Therefore a public conservation benefit often accrues from management for this retained commercial interest. The Conservation Tax Credit applications where commercial interests are retained will be scrutinized to ensure that the conditions of agreement will not result in degradation of the ecological value.

There is increasing interest in North Carolina in “conservation developments,” “conservation golf courses,” and other similar projects where a portion of the land is heavily altered while retaining open space in the remainder of the property and/or making efforts to mitigate the negative environmental impacts in the developed area. The WRC applauds and supports this effort to mitigate the impacts of development and retain some wildlife values in developed landscapes. However, we do not feel that it is an appropriate use of the Conservation Tax Credit to subsidize land uses that diminish the wildlife value of the property. Therefore, the WRC will not support Conservation Tax Credit for acres that are developed for housing, construction or infrastructure development, ski trails, golf courses or other similar land uses that degrade wildlife habitat value. *However, the WRC will evaluate the remaining “open space” acres within a conservation development on the merits of those acres.*

Farms and Forests

WRC recognizes the value of wildlife habitats provided on working farms and forests that are managed properly. Many wildlife species are dependent upon the early succession habitats provided by both farming and forestry land treatments. Management plans for perpetuity are critical for applications in this category. Retained commercial interests will require close scrutiny. Applications will be reviewed based on the same criteria described above.

Subdivision Development

As discussed, the conservation values upon implementation of the easement or fee simple donation must be equal to or greater than the conservation value of the property prior to the transaction. The second objective is to establish if the project will provide the benefits in perpetuity.

Subdivision developments encompass a change in the landscape that inevitably results in creating some or all of the following: road systems, water & sewer systems, electrical facilities and oftentimes provide for recreational opportunities. Land ownership patterns also change as lots of varying sizes are created. Introduction of free-roaming pets is also a typical outcome of most developments.

Therefore, WRC does not recognize fish and wildlife conservation values following development being equal to or greater than the value prior to the development activity. No subdivision development will be considered to meet CTC requirements when evaluated as an entire tract. However, any individual parcel within a development will be reviewed under the same general guidelines described above.

Donation Guidelines for Review of Applications for:
4. Forestland and Farmland Conservation

This could be called the “working lands” public benefit. DENR will most often request the assistance of the North Carolina Department of Agriculture and Consumer Services (NCDACS) in review of applications for Farmland and Forestland Conservation.

There are two main considerations to every review:

1. Is the donation of an interest in real property a public benefit?
2. Does the instrument maintain the public benefit in perpetuity?

The donation

Given the One NC Naturally goal of conserving North Carolina’s natural ecosystem functions and services, Conservation Tax Credit (CTC) project applications should contribute to our state’s “Green Infrastructure.” Donations for forestland or farmland conservation are predominantly through conservation easements.

In terms of the donation itself, two things to look for in forestland or farmland preservation easements applying for Conservation tax Credit:

1. The donor should demonstrate that it is a working forest or farming operation. For working forests, that could be indicated through an existing Forest Stewardship Plan developed and approved by a Registered Forester, or certification with the American Tree Farm System. Farms should be a certified farm, either through NCDACS or the Farm Service Agency (FSA), or as part of a Voluntary Ag District.
2. There is a conservation plan, and the plan is being followed. With deliberation, some consideration will be given to other properties that could fulfill agricultural purposes, or demonstrate forestland and farmland benefits.

Evaluation of the Instrument or Easement

The instrument refers to a conservation easement or conservation agreement, which is referred to here as simply “easement.” The criteria for Farmland and Forestland easements to be approved for conservation tax credits are different, as outlined below.

A. Farmland Conservation

The Division of Soil and Water Conservation in the NCDACS assists in the review of Conservation Tax Credit applications where the donation is to serve a public benefit that is useful for Farmland Conservation.

The easement purpose should be clear, with the agricultural purpose of the easement stated front and center. Defined management goals would help the reviewer, as well. Examples:

- Identify and protect ecologically sensitive areas, including wetlands and streams
- Maintain full function of ecosystem components
- Maintain a sustainable flow of agricultural products
- Conserve renewable natural resources

The reviewer will look to see that easement states that there will be an appropriate conservation plan, and provision for the recipient to review the plan. If it is not a Natural

Resource Conservation Service (NRCS) plan, then the plan should be developed by another acceptable plan preparer.

Example of statement in easement:

“All farming operations shall be conducted in accordance with a conservation plan approved by the NRCS, its successors or assigns, that address: (1) soil and water conservation, (2) pest management, (3) nutrient management, (4) terrestrial and aquatic habitat protection and conservation, and (5) impervious surface/stormwater management. This plan shall be updated periodically, and in any event at the time the basic type of agricultural operation on the Property changes, or at the time ownership of the Property changes. Any conservation plan shall seek to retain and maintain the...(a scenic feature for historic protection, natural forested habitat, etc)...In the event that farming or grazing shall become unfeasible, up to eighty percent of existing open lands may be planted in trees and managed with the timber management provisions in the easement, or allowed to revert to natural habitat for wildlife, with some management component to maintain natural ecosystems or control invasive, exotic species.”

Other things reviewers look for include:

explicit mention of the importance of protection of prime and important farmland soils; connection to “nodes” or communities that support farming; that livestock are excluded from waterways; monitoring for impacts from surface water and groundwater withdrawal, overgrazing, etc; and, that retained rights are balanced with meaningful resource protection. Grantee should have some review of plans prior to exercising retained rights that would result in significant changes to farmland.

Subdivision (defined as dividing a large farm into smaller farms) may be suitable. In the interest of resource protection, reserved homesites and other retained development rights will be scrutinized closely. Questions have been raised about the viability of farming operations with reserved homesites. In general, reviewers are looking at the cumulative impact from retained rights. [See above for NC Conservation Tax Credit approach to homesite review].

In regard to lands not in production at time of review:

In general, reviewers struggle ascertaining how public benefit of a donation will be conserved in perpetuity where instrument allows conversion (e.g., reserved rights allow conversion of existing high-quality wildlife habitats to agricultural or horticultural purposes, or conversion of existing farmland to houses and swimming pools). Specific to farmland, areas of easement that are presently undeveloped for agriculture (e.g., natural forested areas), should be inventoried prior to action to develop these areas. For example, an easement could contain language such as “Any new structures or improvements, or other land-disturbing activities located in the conserved area (i) shall be set back not less than ___ feet from the bank of the stream, (ii) located at least ___ feet from any plant or natural community ranked G1, G2, G3, S1 or S2 by the North Carolina Natural Heritage Program’s ranking system, (iii) located at least _____ feet from habitat utilized by priority species identified in the Wildlife Action Plan Priority Species or Partners in Flight (PIF) species of High or Extremely High Conservation Concern, (iv) located, to the extent practicable, to avoid disturbance to significant archaeological resources (v) located, to the extent practicable, to avoid disturbance to other conservation values of the Property, and (vi) must meet all applicable state and local regulations. Grantor, at its expense, shall have conducted a biological inventory of the site to be converted during the growing season, by an

ecologist or botanist approved by the Grantee. A written report of the inventory shall be submitted to the Grantee. The Department of Cultural Resources should also be consulted about identified significant archaeological resources.” If the nature of the farming operation is changed, or additional lands are to be brought into production, conversion would require update of the conservation plan, and these considerations should be addressed in the plan. The appropriate buffer distances explicit in the easement should be determined on-site, considering landscape context and watershed activities, and appropriate for the region/county.

A possible next step in farmland preservation will be to develop measurable performance expectations, with defined components of a farm management plan. The strongest require approval of the management plan by the easement holder, which many land trusts already do.

B. Forestland Conservation

The North Carolina Forest Service in the NCDACS assists in the review of Conservation Tax Credit applications where the donation is to serve a public benefit that is useful for Forestland Conservation.

A baseline documentation report (an inventory of the natural features of the tract) is required in support of the conservation easement and should accompany the application for tax credit certification. The baseline documentation report and conservation easement will be reviewed to assure that appropriate conservation management practices are proposed for sensitive natural areas and features of the tract. In all cases, production areas for which activities are planned should be referenced.

The easement purpose should be clear, with the forestry and resource conservation purposes of easement stated front and center. Defined management goals would help the reviewer, as well. Examples below:

- Identify and protect ecologically sensitive areas, including wetlands and streams, and native wildlife habitats
- Maintain full function of ecosystem components
- Maintain a sustainable flow of forest products
- Conserve renewable natural resources

The reviewer will look to see that the easement states that there will be a forest management plan, and provision for the recipient to review the plan. The plan should be prepared by a qualified professional. A North Carolina Registered Forester should review and approve the forest management plan, if the forest management plan is not in fact prepared by a registered forester. The terms of the plan are also looked for, including: when the plan is to be prepared (concurrent with closing, or triggered by harvest activities, for example); when the plan is to be revised/updated; mechanism for easement holder review and/or approval; specification that management activities are to be performed according to the plan.

Many easements specify that the harvest plan should be done by a certified or registered forester, and address stream crossings, ingress and egress, etc. Prescribed burning, *if applicable*, must be done under a burn plan prepared by a Certified Burner. Prescribed fire is a public benefit for a number of reasons, including safety through hazard reduction. Smoke easements can also demonstrate an interest in, or indicate the landowner’s commitment to, habitat

conservation. Agreements, or the terms of such an agreement, would be encouraged in all conservation easements, especially those near conservation lands.

In regard to lands not in production at time of review:

In general, reviewers struggle ascertaining how public benefit of a donation will be conserved in perpetuity where instrument allows conversion (e.g., reserved rights allow conversion of existing high-quality wildlife habitats to agricultural or horticultural purposes, or conversion of existing farmland to houses and swimming pools). Areas of easement that are presently undeveloped for intensive silvicultural production (e.g., natural forested areas), should be inventoried prior to action to develop these areas. For example, an easement could contain language such as “Any new structures or improvements, or other land-disturbing activities located in the conserved area (i) shall be set back not less than ___ feet from the bank of the stream, (ii) located at least ___ feet from any plant or natural community ranked G1, G2, G3, S1 or S2 by the North Carolina Natural Heritage Program’s ranking system, (iii) located at least _____ feet from habitat utilized by priority species identified in the Wildlife Action Plan Priority Species or Partners in Flight (PIF) species of High or Extremely High Conservation Concern, (iv) located, to the extent practicable, to avoid disturbance to significant archaeological resources (v) located, to the extent practicable, to avoid disturbance to other conservation values of the Property, and (vi) must meet all applicable state and local regulations. Grantor, at its expense, shall have conducted a biological inventory of the site to be converted during the growing season, by an ecologist or botanist approved by the Grantee. A written report of the inventory shall be submitted to the Grantee. The Department of Cultural Resources should also be consulted about identified significant archaeological resources.” If the nature of the operation is changed, or additional lands are to be brought into production, conversion would require update of conservation plan, and these considerations should be addressed in the plan. The appropriate buffer distances explicit in the easement should be determined on-site, considering landscape context and watershed activities, and appropriate for the region/county.

A possible next step in forestland preservation will be to develop measurable performance expectations, with defined components of a forest management plan. The strongest require approval of the management plan by the easement holder, which many land trusts already do. Another potential recommendation would be to cite certification standards (e.g., Forest Stewardship Council or Sustainable Forestry Initiative), even if certification is not required. This allows management to keep up with best science and changing information. The recipient could even require certification as a condition of the easement, if it achieves conservation desired by the recipient. That would be more straightforward, from a monitoring perspective.

Donation Guidelines for Review of Applications for:

5. Watershed Protection

The Division of Water Quality is the primary reviewer for Conservation Tax Credit applications where the donation is to serve a public benefit that is useful for Watershed Protection.

Applications that contribute to protection of these resources are likely Watershed Protection projects:

- Classification (main and supplemental) of any waters on site

- Outstanding Resource Water (ORW)
- High Quality Water (HQW)
- Water Supply (WS)
- Trout (Tr)
- Susceptibility rating
 - Division of Environmental Health Public Water Supply, Source Water Assessment and Protection of drinking water supplies
- Headwaters
- Groundwater recharge areas
- Wetlands Connectivity (site connected to other sites of high value)
- Natural Heritage Program listed species (aquatic and terrestrial)
- Prime agricultural soils
- Ecologically intact riparian and wetland buffers
- Public Access
- Impaired waters
- Watershed, Source Water or Wellhead Protection plans
- Connectivity to watershed protection/restoration sites
 - Size is an important consideration, and properties of lesser area will receive extra scrutiny for watershed protection benefits

Characteristics of applications that are less likely to be reviewed favorably:

- Uses that degrade water quality or impair other site uses
- Only site use protections are those required by law
- Environmental benefit is minor
- Extensive impervious surface
- Future land use management changes in the watershed will be detrimental to water quality

An emphasis on larger acreages for all characteristics may be considered, as that could translate to significant portions of a “watershed,” and/or greater positive impact on headwaters or groundwater recharge areas. Of course, not all critical resources are extensive in area. In either case, it would be expected that a watershed protection project would contain very limited, if any, impervious surface, and minimal soil disturbance. Allowances for hydrologic modification, water withdrawal, and other potential impacts to ground and surface waters will be scrutinized. These and other similar impacts should be addressed in the instrument of transfer. Reviewer would expect the project to feature natural drainage pattern and natural groundcover (e.g., riparian and wetland buffers forested with native woody vegetation), and following the recommendations of Clean Water Management Trust Fund and Water Services Assessment, a 300-foot riparian zone or the 100-year flood plain (whichever is greater) has been identified as a priority for conservation.

Maps that would help Division of Water Quality reviewer include:

1. Delineation of the watershed that the donation is protecting. This can be a smaller watershed (i.e., 14 digit HUC). In some cases, this could be a large map, where the watershed will be considerably larger than the site itself.
2. Location of existing and proposed development in the watershed to be protected.

Donation Guidelines for Review of Applications for:

6. Conservation of Natural Areas as that term is defined in G.S. 113A-164.3(3)

"Natural area" means an area of land, water, or both land and water, whether publicly or privately owned, that (i) retains or has reestablished its natural character, (ii) provides habitat for rare or endangered species of plants or animals, (iii) or has biotic, geological, scenic, or paleontological features of scientific or educational value. (G.S. 113A-164.3(3))

North Carolina Natural Heritage Program (NHP) is one of two primary reviewers for Conservation Tax Credit applications where the donation is to serve a public benefit that is useful for Conservation of Natural Areas. The N.C. Division of Coastal Management (DCM) is the other primary reviewer of applications that involve Conservation of Natural Areas.

A. Natural Heritage Program review

NHP will review applications submitted to the North Carolina Conservation Tax Credit Program for the purposes of fish and wildlife conservation (specifically rare species and their habitats) and/or conservation of natural areas.

To achieve either of these purposes, two criteria must be met:

1. The project area must contain natural areas or species of significant conservation value, or contribute significantly to their protection; and
2. The donation must adequately protect those values in perpetuity.

For these purposes, significant conservation value is defined as the presence of:

1. A rare species,
2. A rare natural community,
3. A good example of a natural community (such as mature forests or intact wetlands),
4. An unusual habitat feature (such as seeps, springs, or den sites), or
5. Good general habitat for native species (see criteria below).

Conservation values may be either known to the Natural Heritage Program, documented in the tax credit application, or recognized through inclusion of the property as a priority area in an adopted local, regional, or state conservation plan, such as the One NC Naturally Conservation Planning Tool.

If no specific values are known or documented, sites will be evaluated for characteristics that will give them good general habitat value. These characteristics include:

1. Relatively natural or recovering native vegetation – forest or other appropriate vegetation
2. Sufficient size – generally 25 contiguous acres for forest, but occasionally less for other kinds of non-forested natural habitats
3. Lack of fragmentation
4. Connection to other protected lands.

A piece of land may also provide public benefit by helping to protect other significant lands, even if it lacks the above characteristics. Examples of these *indirect benefits* include buffering of streams to help protect water quality and aquatic habitat, buffering of protected natural areas to protect them from edge effects, and corridors that allow animals to move between connected patches of better habitat. The land in the project must be in a condition to perform these functions or capable of recovering to appropriate condition with the planned protection.

It is complex to determine a recipient's ability to permanently ensure protection by conservation easement. The recipient of the easement must monitor the easement and make sure the owner of the underlying fee adheres to the easement terms. Because ownership of the underlying fee interest may change, it is not known how difficult it may be to enforce an easement in the future. Conservation easements will be reviewed to ensure that the easement terms truly protect the public benefits. Retained rights should not conflict with these benefits. The Natural Heritage Program will consider the cumulative impacts of all retained rights, assuming that all retained rights will eventually be exercised in the most harmful way. Sites must meet the criteria for size, limited fragmentation, and biological value under this worst-case scenario in order for public benefit to be certified.

B. Division of Coastal Management review

In order to effectively administer a comprehensive coastal management program, the Division of Coastal Management must include and take interest in land management and acquisition strategies. This is in part due to recognition that some areas of the coast are inherently too hazardous or ecological sensitive to be developed even if subject to the regulatory authority of CAMA. The Public Beach and Coastal Waterfront Access Program and the N.C. Coastal Reserve Program fulfill this requirement. While land acquisition activities on the part of the Division have been effective, it is also recognized that they are expensive, require a great deal of staff time and carry the burden of long-term site management which often strain existing staff resources. It is for these reasons that the Division has an interest in the donation of coastal properties to the state, local governments or land trusts.

For donation purposes to the NC Conservation Tax Credit Program, the Division will consider certifying:

1. Fragile coastal natural resource areas that are generally recognized to be of educational, scientific, or cultural value because of the natural features of the particular site. These features in the coastal area serve to distinguish the area from the vast majority of coastal landscape and therein establish its value. Such areas may be key components of systems unique to the coast that act to maintain the integrity of that system.
2. Areas that contain outstanding examples of coastal processes or habitat areas of significance to the scientific or educational communities. These areas are essentially self-contained units or "closed systems" minimally dependent upon adjoining areas.
3. Areas that may be particularly important to a locale either in an aesthetic or cultural sense.
4. Fragile coastal cultural resource areas that are generally recognized to be of educational, associative, scientific, aesthetic, or cultural value because of their special

importance to our understanding of past human settlement of and interaction with the coastal zone. Their importance serves to distinguish the area as significant among the historic architectural or archaeological remains in the coastal zone, and therein established their value.

5. Coastal areas that sustain remnant species. These areas support native plants or animals determined to be rare or endangered (synonymous with threatened and endangered), within the coastal area. Such places provide habitats necessary for the survival of existing populations or communities of rare or endangered species within the coastal area. A determination will be made based upon the listing adopted by the North Carolina Wildlife Resources Commission or the federal government listing; upon written reports or testimony of experts indicating that a species is rare or endangered within the coastal area; and upon consideration of written testimony of local government officials, interest groups, and private land owners. The continued survival of certain habitats that support native plants and animals in the coastal area is vital for the preservation of our natural heritage and for the protection of natural diversity which is related to biological stability. These habitats and the species they support provide a valuable educational and scientific resource that cannot be duplicated.
6. Coastal complex natural areas that support native plant and animal communities and provide habitat qualities that have remained essentially unchanged by human activity. Such areas may be either significant components of coastal systems or especially notable habitat areas of scientific, educational, or aesthetic value. They may be surrounded by a landscape that has been modified but does not drastically alter conditions within the natural area. Such areas may have been altered by human activity and/or subject to limited future modifications, e.g. the placement of dredge spoil, if it is determined that the modifications benefit the plant or animal habitat or enhance the biological, scientific or educational values which will be protected. Coastal complex natural areas function as key biological components of natural systems, as important scientific and educational sites, or as valuable scenic or cultural resources. Often these natural areas provide habitat suitable for threatened or endangered species or support plant and animal communities representative of pre-settlement conditions. These areas help provide a historical perspective to changing natural habitats in the coastal area and together are important and irreplaceable scientific and educational resources. The significance of a natural area may be determined by consulting the Natural Heritage Priority List maintained by the Natural Heritage Program.
7. Coastal geologic formations that contain geologic formations that are unique or otherwise significant components of coastal systems, or that are especially notable examples of geologic formations or processes in the coastal area. Such areas will likely be identified by the State Geologist. Unique coastal geologic areas are important educational, scientific, or scenic resources that would be jeopardized by uncontrolled or incompatible development. The objective is to preserve unique resources of more than local significance that function as key physical components of natural systems, as important scientific and educational sites, or as valuable scenic resources. Of specific interest is ensuring that the geologic feature will be able to freely interact with other components of the identified systems. These interactions are often the natural forces acting to maintain the unique qualities of the site. The primary concern is the

relationship between the geologic feature and the accompanying biological component associated with the feature. Other interactions that may be of equal concern are those relating the geologic feature to other physical components, specifically the relationship of the geologic feature to the hydrologic elements; ground water and surface runoff. Donation should ensure that the geologic feature or process will be preserved for and be accessible to the scientific and educational communities for related study purposes.

Donation Guidelines for Review of Applications for:

7. Conservation of Natural or Scenic River Areas as those terms are used in G.S. 113A-34

The N.C. Department of Environment and Natural Resources administers the N.C. Natural and Scenic Rivers System under the authority of the Natural and Scenic Rivers Act of 1971. According to this Act, certain rivers of North Carolina possess outstanding natural, scenic, educational, geological, recreational, historic, fish and wildlife, scientific and cultural values of great benefit to the people. The General Assembly further finds as policy the necessity for a rational balance between the conduct of man and the preservation of natural beauty along the many rivers of the State. This policy includes retaining the natural and scenic conditions in some of the state's valuable rivers by maintaining them in a free-flowing state and to protect their water quality and adjacent lands by retaining these natural and scenic conditions. It is further declared that the preservation of certain rivers or segments of rivers in their natural and scenic condition constitutes a beneficial public purpose. (1971, c. 1167, s. 2.)

- **Natural River Areas:** Those free-flowing rivers or segments of rivers and adjacent lands existing in a natural condition. Those rivers or segments of rivers that are free of man-made impoundments and generally inaccessible except by trail, with the lands within the boundaries essentially primitive and the waters essentially unpolluted. These represent vestiges of primitive America.
- **Scenic River Areas:** Those rivers or segments of rivers that are largely free of impoundments, with the lands within the boundaries largely primitive and largely undeveloped, but accessible in places by roads.

It is under this authority that the Division of Parks and Recreation and the Division of Water Resources will focus on and be the principal reviewers of donations under the N.C. Conservation Tax Credit Program citing Conservation of Natural or Scenic River Areas as a public benefit.

The Divisions of Parks and Recreation and Water Resources will consider the following factors in determining whether properties are eligible to receive a certification for tax credit:

Water Quality: Properties located on a natural or scenic river area that will protect or enhance water quality of that area. Properties located upstream of a natural or scenic river area, or on a perennial tributary to a natural or scenic river area, will be considered if their donation would significantly protect or enhance water quality of the reach designated as natural or scenic. Riparian buffer areas should extend no less than 100 feet inland from the shoreline.

Visual Quality: Properties that fall within the extent of the visual horizon from either stream bank will be considered, but must protect at least 20 feet inland from the stream bank and also retain the visual characteristics associated with the designated river reach.

Protective Measures: Properties must include protective instruments that further the goals of the natural and scenic rivers system. These include, but are not limited to, measures that:

- maintain or restore natural, primitive conditions;
- prohibit alterations of stream flow or construction of impoundments;
- prohibit wastewater discharges; prohibit construction of roads and power lines;
- largely prohibit alterations of the natural landscape; and
- prohibit construction of any water resources project that would be in conflict with the purposes of the N.C. Natural and Scenic Rivers Act.

Buffer Zone: Covenants and restrictions to protect water quality should establish a buffer zone adjacent to the river that is at least 100 feet wide along the entire tract. Within the buffer zone, activities to be allowed would be limited to such activities as selective clearing and controlled burning in accordance with a forest management plan approved by NCDENR, and limited unimproved foot trails not to exceed 4 feet in width. Foot trails generally parallel to the river shall be no closer to the river than 50 feet. Foot trails perpendicular to the river and access points for watercraft will be minimized within the buffer zone.

- Except to accommodate the above allowable activities, the following shall be prohibited within the buffer zone: filling, draining, flooding, dredging, impounding, clearing, burning, cutting or destroying vegetation, cultivating, excavating, erecting, overnight camping, constructing, releasing wastes, or otherwise doing any work within the buffer zone, introducing exotic species into the buffer zone (except biological controls pre-approved by NCDENR); and from changing the grade or elevation, impairing the flow or circulation of waters, reducing the reach of waters, and any other discharge or activity requiring a permit under Clean Water or Water Pollution Control laws and regulations, as amended.
- The following are expressly excepted from the prohibited activities: (a) cumulatively very small impacts associated with hunting, fishing, and similar recreational or educational activity, consistent with the continuing natural condition of the property; (b) removal or trimming of vegetation hazardous to persons or property; and (c) restoration or mitigation required under law. No permanent structures would be allowed within the 100 foot buffer zone.

NOTE: Standards for protection of natural river areas will be more stringent than for scenic river areas.

Restoration Measures: Properties will be considered if their donation includes provisions for measures that further the goals of the natural and scenic river system by removing significant man-made intrusions to the river or its visual corridor. Examples include removal of dams, structures or roads.

Donation Guidelines for Review of Applications for:
8. Conservation of Predominantly Natural Parkland

The Division of Parks and Recreation is the primary reviewer for Conservation Tax Credit applications where the donation is to serve a public benefit that is useful for Conservation of Predominantly Natural Parkland.

Public access is the primary factor that distinguishes conservation of predominantly natural parkland from fish and wildlife or conservation of natural areas. Issues that are key to fish and wildlife conservation or conservation of natural areas, such as fragmentation reduction, are still of interest, but perhaps given less consideration.

Donation Guidelines for Review of Applications for:
9. Historic Landscape Conservation

The North Carolina Department of Environment and Natural Resources will request the assistance of The Department of Cultural Resources in review and evaluation of Conservation Tax Credit applications, where the donation is to serve a public benefit that is useful for Historic Landscape Conservation.

Historic landscapes include a large and varied number of land uses. What they have in common are historic places, events, persons and/or information to aid in our understanding of history or pre-history. Their conservation may add context, texture, and interest to the communities within which they exist, as well as add cultural, educational and economic value.

Historic Significance

One or more of the public conservation benefits listed above must result from the donation for it to receive certification to be eligible for a Conservation Tax Credit.

When historic landscape conservation is the primary purpose of a CTC application, the level of its significance must be identifiable. For the required review process, the National Register of Historic Places Criteria for Evaluation will be used as an indication of importance. These can be viewed at <http://www.nationalregisterofhistoricplaces.com/faq.html>. When an application does not currently include or otherwise support a previously designated (federal, state or local) historic property, then best professional judgment by staff of the State Historic Preservation Office will be used to weigh conceptual significance as well as its enduring physical significance.

Integrating Significance

The consideration of real property will frequently involve more than one of the public conservation benefits required by CTC statutes. The donor must then decide which benefit should be considered primary or principal for the purpose of application for CTC Certification. When there is any question about whether the donation will meet the federal standards for historic recognition, then consideration should be given to applying as a natural resource conservation of appropriate public use project. Also, when the historic conservation is clearly secondary to other site-specific conservation or use purposes, then the application should focus

on the primary conservation benefit. In either case, the historic conservation opportunity should be noted in the application as a contributing factor for certification.

Regardless of whether historic conservation is the primary or secondary purpose of the donation, the stewardship of these donated real properties is critical to their conservation in perpetuity. Thus, application reviewers will look for and consider whether the conservation benefits are likely to continue under the stewardship practices documented in the application package.