North Carolina Department of Environment and Natural Resources

Pat McCrory
Governor

John E. Skvarla, III
Secretary

October 1, 2013

MEMORANDUM

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

FROM: Neal Robbins, Director of Legislative Affairs

SUBJECT: 2013 Conservation Easement Program Annual Report

DATE: October 1, 2013

Pursuant to G.S. 113A-235(c), The Department shall report to the Environmental Review Commission on the Conservation Easements Program. Please consider the attached as the formal submission of 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.robbins@ncdenr.gov.

cc: Mitch Gillespie, Assistant Secretary for Environment, NCDENR
Scott Pohlman, Director, Conservation Incentives Program, NCDENR
Linda Pearsall, Director, Conservation, Planning and Community Affairs, NCDENR
Janine Nicholson, Conservation Coordinator, NCDENR

CONSERVATION EASEMENT PROGRAM
ANNUAL REPORT
TO THE
ENVIRONMENTAL REVIEW COMMISSION

Fall 2013

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 2012-2013.

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 2012-2013, 64 applications for certification were approved for the conservation of 6,000 acres, bringing the cumulative acreage to 238,000 acres. The number of donations of interest in real property donated for conservation purposes declined during the past fiscal year, as did the number of acres donated. The Department continues to improve implementation of the conservation tax credit. However, S.L. 2013-316 authorizes the repeal of G.S. 105-151.12 and G.S. 105-130.34, and eliminates 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 1,063 Department-held easements are tracked spatially by the N.C .Natural Heritage Program. There are 470,090 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). We anticipate that 2013, the last year of the conservation tax credit, will again include 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. The General Assembly addressed the issue of maintaining a property's conservation values 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 Department of Environment and Natural Resources with questions.

Numbers for the Conservation Tax Credit FY 2012-2013:

- Over the past year, 64 applications were reviewed for eligibility, and all 64 were certified. (Graph 2 shows only 46 projects for 2012, because 18 of the reviews

conducted during FY 2012-13 were for donations that had been made in other years, primarily 2011).

- The 64 certified projects totaled 6,000 donated acres of property interests, worth an estimated $55 million. (See graphs 3 and 4 at end of report).
- Since its establishment, 238,000 acres have been certified by the Department of Environment and Natural Resources; and the applicants have reported an estimated value of more than $1.3 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. Seven preliminary reviews were conducted during 2012-13. Four of the preliminary applications were acceptable to reviewers with no changes recommended. One application did not identify a qualified recipient, and it was communicated to the applicant that the donation could not be certified without a qualified recipient. Reviewers provided suggestions for two of the 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 declined during the past year. Understandably, the estimated value of donations of interests in real property also declined, as shown in Graph 4. The donated property interests from 2007 through August 2013 include 549 donations that have been certified for a range of beneficial conservation projects, totaling over 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 125 acres, and the median was 62 acres. During this same period, 400 of the 549 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 have increased their scrutiny of donations. Only one application received in the 2012-13 fiscal year did not receive initial approval, but was approved when additional public benefits were reconsidered. 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 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. 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 2012-13 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. This second database contains more than 1,519 records, and greatly helps in compiling reports such as this.
- Communicating with recipients of conservation tax credit donations to ascertain the status of properties, and to ensure that the 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.

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

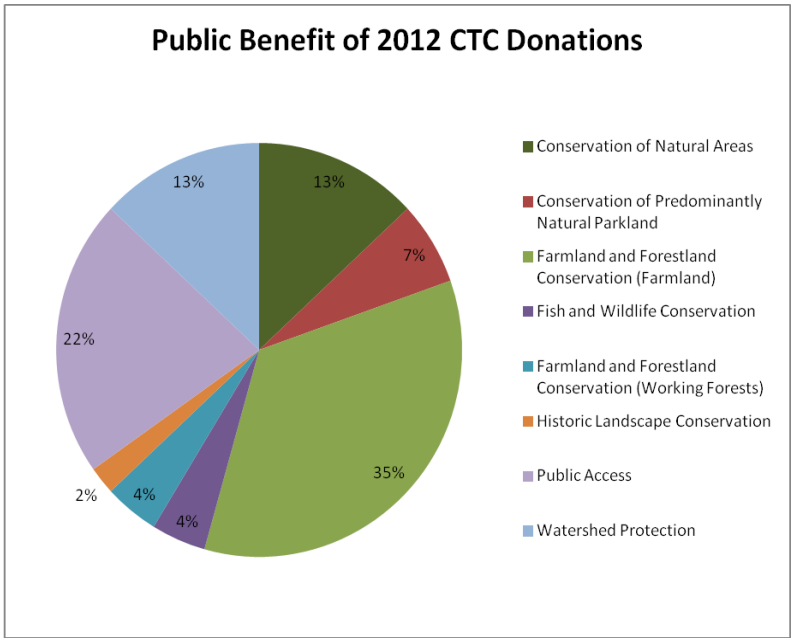
CONCLUSION

As described in this report, the acquisition of conservation lands has been supported by tax incentives and the work of partners and willing landowners. 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. S.L. 2013-316, “An act to simplify the North Carolina Tax Structure and to reduce individual and business tax rates," repeals G.S. 105-151.12 and G.S. 105-130.34, and eliminates the conservation tax credit effective January 1, 2014. The Department of Environment and Natural Resources will continue to review for certification the 2013 tax credit applications, as long as applications are submitted, working to ensure that individuals seeking tax benefits are provided services as needed.

DATA REGARDING N.C. CONSERVATION TAX CREDIT

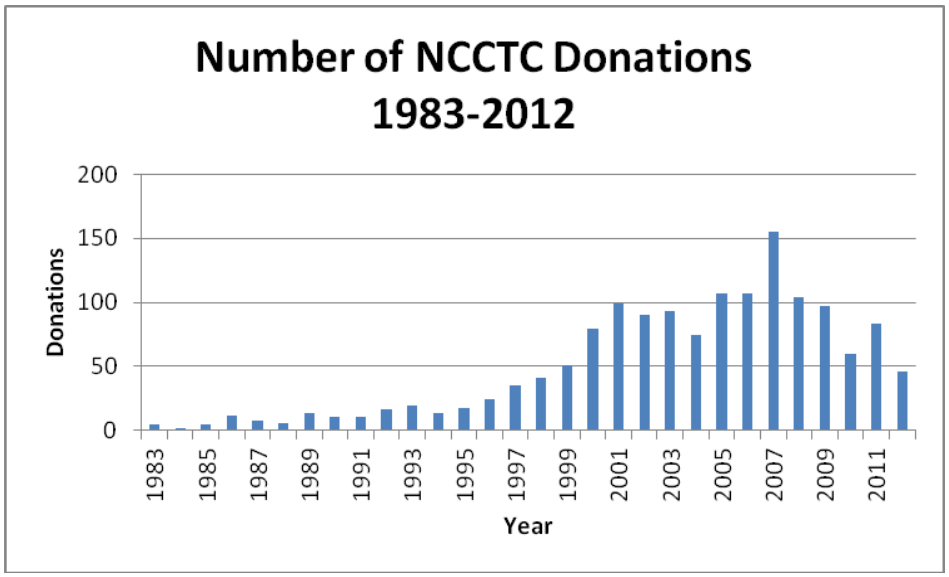
Graph 1: Primary public benefits for 2012 conservation tax credit donations (under G.S. 105-130.34 and G.S. 105-151.12). Note that most donations provide multiple additional public benefits.

Graph 1



Graph 2: Cumulative Number of Donations since Inception of CTC*
Over the past year, 64 applications were reviewed and certified. (Graph 2 shows only 46 donations for 2012, because 18 of the reviews conducted during 2012 were for donations that had been made in 2011 or other years.)

Graph 2

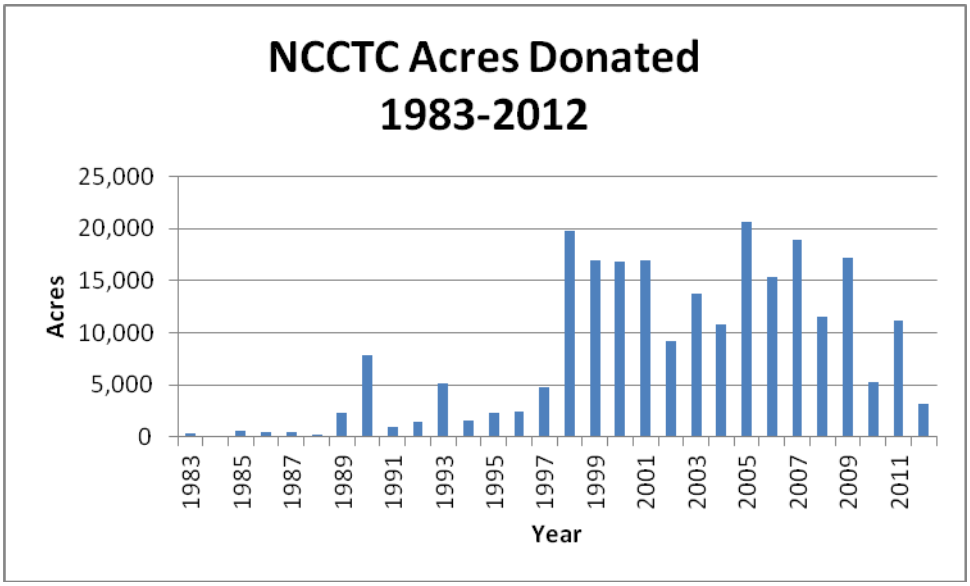


*Conservation Tax Credit

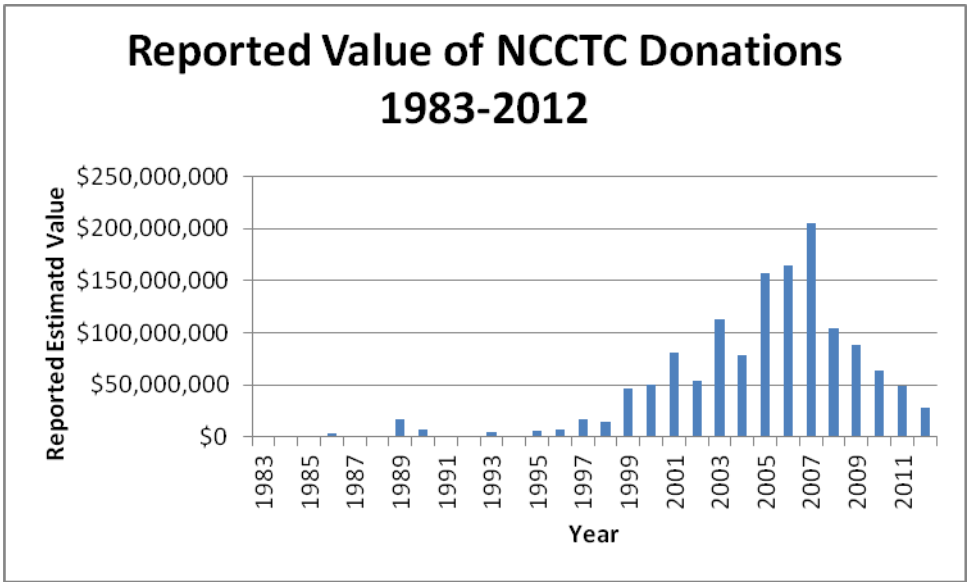
Graphs 3 and 4: Acreage Donated and Estimated Value over time

For 2012, the certified projects totaled more than 6,000 donated acres of property interests, worth an estimated $55 million. (Note that some donations reviewed fiscal year 2012-13 were gifted in years other than 2012).

Graph 3



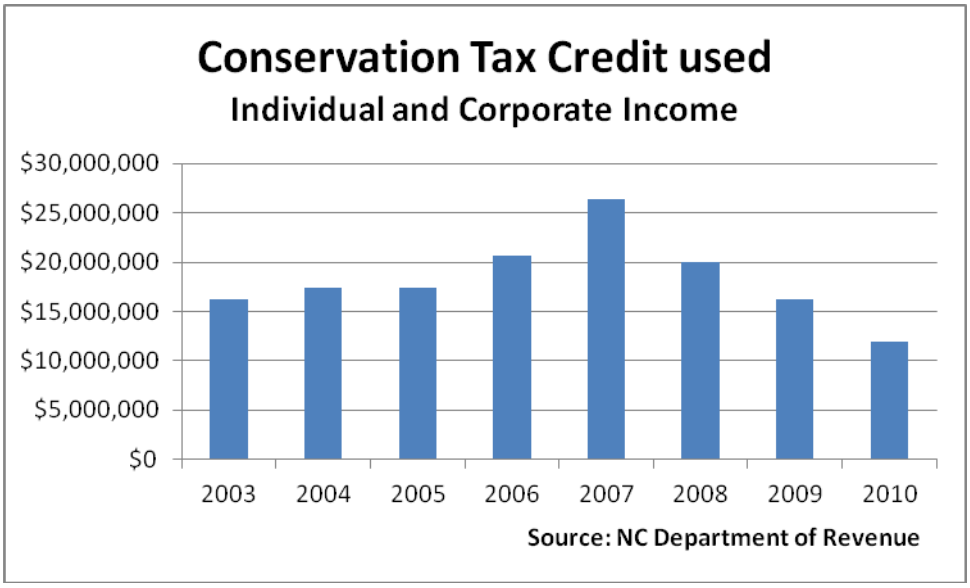
Graph 4



Graphs 5 and 6: Individual and Corporate Tax Credit Claimed 2003 – 2010 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

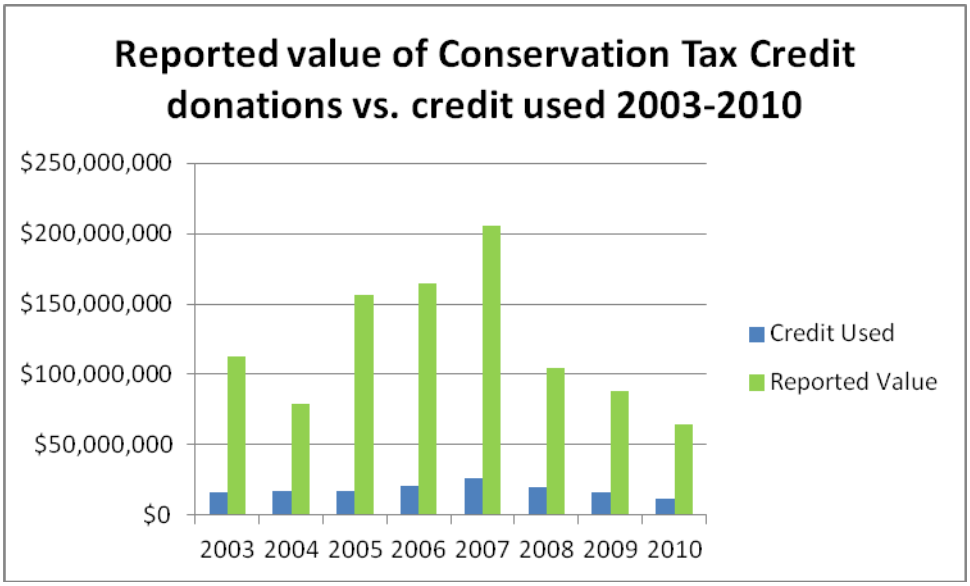


Table 1: Conservation easements held by the Department of Environment and Natural Resources

Managed Areas from NCNHP Managed Area GIS data layer	Number of Easements	Acres
4-H Environmental Education DNP	1	135
Alligator River Game Land DNP	1	14,221
Angola Bay Game Land DNP	1	13,860
Appalachian State University DNP	1	67
Averasboro Battlefield DNP	1	53
Bald Head Island State Natural Area DNP	1	359
Bald Head Woods Coastal Reserve DNP	1	185
Bat Fork Bog Plant Conservation Preserve DNP	1	15
Bear Paw State Natural Area DNP	1	306
Beech Creek Bog State Natural Area DNP	1	114
Bentonville Battleground State Historic Site DNP	1	69
Bertie County Game Land DNP	1	1,991
Bethania's Walnut Bluffs State Historic Site DNP	1	20
Big Pond Bay Plant Conservation Preserve DNP	1	86
Bird Island Coastal Reserve DNP	1	1,438
Bladen Lakes State Forest DNP	1	1,562
Blue Pond Preserve DNP	1	1
Boiling Spring Lakes Plant Conservation Preserve DNP	1	3,264
Brinkleyville Game Land DNP	1	1,835
Buffalo Cove Game Land DNP	1	6,616
Bull Neck Swamp DNP	1	2,321
Bullhead Mountain State Natural Area DNP	1	161
Bunker Hill Covered Bridge DNP	1	8
Bushy Lake State Natural Area DNP	1	4,248
Buxton Woods Coastal Reserve DNP	1	1,007
Cape Fear River Wetlands Game Land DNP	1	7,169
Carl Sandburg Home National Historic Site Buffer DNP	1	23
Caswell Game Land DNP	1	1,264
Cedar Cliff Mountain Plant Conservation Preserve DNP	1	72
Chimney Rock State Park DNP	1	2,555
Chowan Swamp Game Land DNP	1	23,828
Clemmons Educational State Forest DNP	1	312
Cold Mountain Game Land DNP	1	3,307
Columbus County Game Land DNP	1	8,541
Croatan Game Land DNP	1	586
Crowders Mountain State Park DNP	1	2,837
Currituck Banks Component of the NCNERR DNP	1	964
Dulany Bog Plant Conservation Preserve DNP	1	33
Dupont State Forest DNP	1	6,976

Managed Areas from NCNHP Managed Area GIS data layer	Number of Easements	Acres
Eagles Island Natural Area DNP	1	239
Eastwood Plant Conservation Preserve DNP	1	295
Elk Knob State Park DNP	1	1,407
Embro Game Land DNP	1	8,844
Emily and Richardson Preyer Buckridge Coastal Reserve DNP	1	27,111
Endor Iron Furnace DNP	1	241
Eno River Diabase Sill Plant Conservation Preserve DNP	1	265
Eno River State Park DNP	1	1,848
Fort Macon State Park DNP	1	364
Goose Creek Game Land DNP	1	78
Gorges State Park DNP	1	6,976
Grandfather Mountain State Park DNP	1	2,488
Green River Game Land DNP	1	4,130
Gull Island Wildlife Conservation Area DNP	1	69
Gull Rock Game Land DNP	1	5,738
Hammocks Beach State Park DNP	1	1,001
Hanging Rock State Park DNP	1	4,667
Harvest Field Plant Conservation Preserve DNP	1	29
Haw River State Park DNP	1	16
Hebron Road Plant Conservation Preserve DNP	1	59
Hill Forest/Flat River DNP	1	133
Hog Branch Ponds Plant Conservation Preserve DNP	1	914
Holly Shelter Game Land DNP	1	15,337
Jockeys Ridge State Park DNP	1	369
Johns River Game Land DNP	1	1,008
Jones Lake State Park DNP	1	1,736
Juniper Creek Game Land DNP	1	18,516
Kitty Hawk Woods Coastal Reserve DNP	1	1,840
Lake James State Park DNP	1	295
Long Mountain/Poison Fork Plant Conservation Preserve DNP	1	248
Lower Fishing Creek Game Land DNP	1	1,295
Lower Haw River State Natural Area DNP	1	50
Lumber River State Park DNP	1	5,068
Masonboro Island Component of the North Carolina National Estuarine Research Reserve DNP	1	4,293
Melrose Mountain Plant Conservation Preserve DNP	1	323
Mineral Springs Barrens Plant Conservation Preserve DNP	1	54
Mitchell River Game Land DNP	1	467
Moores Spring DNP	1	359
Mount Jefferson State Natural Area DNP	1	539
Mount Mitchell State Park DNP	1	1,430

Managed Areas from NCNHP Managed Area GIS data layer	Number of Easements	Acres
Mountain Bog State Natural Area DNP	1	73
Mulberry Mill Meadow Bog Wildlife Conservation Area DNP	1	39
NC Clean Water Management Trust Fund Easements	461	72,211
NC Department of Environment and Natural Resources Easements	1	238
NC Division of Land Resources Easement	1	146
NC Division of Parks and Recreation Easements	2	719
NC Ecosystem Enhancement Program Easements	467	10,292
NC Wildlife Resources Commission Easements	1	6,143
Needmore Game Land DNP	1	4,215
Neuse River Game Land DNP	1	3,257
New River State Park DNP	1	300
Nicholson Creek Game Land DNP	1	827
North Carolina Swine Buyout Easement	1	1,219
North Carolina Zoological Park DNP	1	564
North River Game Land DNP	1	8,978
Northwest River Marsh Game Land DNP	1	1,440
Occoneechee Mountain State Natural Area DNP	1	61
Ochlawaha Bog Plant Conservation Preserve DNP	1	4
Okeewemee Woodland Plant Conservation Preserve DNP	1	66
Paddy Mountain Plant Conservation Preserve DNP	1	242
Pee Dee River Game Land DNP	1	614
Pettiford Creek State Forest DNP	1	251
Pettigrew State Park (Scuppernong River Section) DNP	1	2,102
Picture Creek Barrens DNP	1	311
Pisgah Game Land DNP	1	2,292
Pondberry Bay Plant Conservation Preserve DNP	1	2,077
Pretty Pond Limesink Complex Preserve DNP	1	10
Rachel Carson Component of the North Carolina National Estuarine Research Reserve DNP	1	2,327
Raven Rock State Park DNP	1	1,589
Rendezvous Mountain Educational State Forest DNP	1	2,385
Roanoke Earthworks DNP	1	186
Roanoke Island Festival Park DNP	1	154
Roanoke Island Marshes Game Land DNP	1	1,829
Roanoke River Wetlands Game Land DNP	1	17,987
Run Hill State Natural Area DNP	1	121
Sandhills Game Land DNP	1	3,074
Sandy Creek Game Land DNP	1	923
Sandy Run Savannas State Natural Area DNP	1	1,254
Shocco Creek Game Land DNP	1	7,928
South Mountains Game Land DNP	1	18,825

Managed Areas from NCNHP Managed Area GIS data layer	Number of Easements	Acres
South Mountains State Park DNP	1	13,697
Stone Mountain State Park DNP	1	9,932
Stones Creek Game Land DNP	1	2,209
Suggs Mill Pond Game Land DNP	1	10,562
Tater Hill Plant Conservation Preserve DNP	1	783
Theodore Roosevelt State Natural Area DNP	1	273
Three Top Mountain Game Land DNP	1	2,060
Tillery Game Land DNP	1	5,076
Toxaway Game Land DNP	1	2,707
Van Swamp Game Land DNP	1	5,515
Weymouth Woods State Natural Area/Boyd Estate DNP	1	141
Weymouth Woods State Natural Area/Paint Hill DNP	1	79
Weymouth Woods State Natural Area/Weymouth Woods DNP	1	479
White Oak Mountain Plant Conservation Preserve DNP	1	115
Whitehall Plantation Game Land DNP	1	1,438
William B. Umstead State Park DNP	1	3,719
Zeke's Island Component of the North Carolina National Estuarine Research Reserve DNP	1	1,489
NOTE: DNP = Dedicated Nature Preserve		
Total	**1063**	**470,091**