Urban development is threatening rural living in Haywood County, North Carolina. Farm preservation is one means to ensure the protection of agricultural practices, natural resources, and aesthetic beauty in the region. The following report summarizes conservation options that can protect Sugar Cove Farm located in Cruso, Haywood County.
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I. INTRODUCTION

Rapid development in Haywood County, North Carolina is threatening to destroy the natural ecology, agricultural productivity, and scenic beauty found in the Appalachian Mountains. Between 2002 and 2007, North Carolina lost 600,000 acres of farmland according to the U.S. Department of Agriculture (USDA) National Agricultural Statistics Service.¹ In addition, thousands of acres of forestland have also been converted to development. Farmland protection is becoming increasingly important as urban areas continue to expand because agriculture is North Carolina’s biggest industry, contributing approximately $70 billion to the state economy each year.¹

CONSERVATION OPTIONS

There are several options available to private landowners who wish to conserve land and regulate development on their property. It is especially important that privately-held land is conserved because the development of private forests for residential and other uses such as timber production threatens to significantly reduce forest cover in North Carolina.²

Conservation Easement

For over 25 years, conservations easements have been used by both public and private conservation organizations as an important tool for protecting land and its natural resources or ecological significance.³ Easements are restrictions placed on real property that are voluntarily donated or sold by the landowner.³ They constitute legally binding agreements that limit certain types of use or development, while still allowing the landowner to retain certain property rights such as living on and using the land.³ An easement can be utilized to sustain appropriate and traditional rural land uses such as the agriculture, hunting, and forestry activities.

A fundamental attribute of an easement is that its restrictions and terms are flexible and it can be designed to suit the individual needs of a property owner.³ Perpetual easements are generally considered more desirable than term easements, which expire after a given length of time; because they offer permanent land protection and bind both present and future landowners.⁴ Additionally, permanent easements are classified as donations eligible for federal and state tax benefits.⁴ Studies indicate that many landowners are willing to donate or sell easements largely as the result of their own personal attachment to the land and a desire to see that land permanently preserved.⁵ A perpetual conservation easement offers long-term protection and preservation of the historic, scenic, natural, and ecological value of the land.

Mutual Covenant

A mutual covenant is a good alternative to an easement if conservation is important to several landowners, but not of enough importance to merit implementation by a local land trust’s limited resources.⁶ If there are neighboring landowners who share a concern for protecting the open space they collectively own, mutual covenants can be exchanged to protect that land. Each landowner’s
covenant is enforceable by all of the other landowners and their heirs or successors; however, there is no guarantee that the covenants will be enforced. Additionally, there are no tax deductions offered for entering a mutual covenant and they may not serve as permanent protection since they can be nullified by subsequent agreement of all owners.

**Donation by Will**

Land donation by will is another conservation option available to private landowners and there are several ways to name a local land trust as a beneficiary of a will. Landowners may choose to give specific assets, a part of their estate, or the residual estate after payment of other bequests to a conservation organization. Planned giving specialists recommend that a donor specifies a percentage of the estate go to the chosen organization, rather than a specific sum, to allow the owner’s charitable giving goals to adjust with changing life circumstances. Donating land by will allows the owner to determine for what specific purpose he would like his gift to be used in the future. It also allows the landowner to continue living on and using the property for his lifetime while ensuring that it will be conserved and protected in the future. This type of donation is considered a charitable gift and qualifies for estate tax deductions.

**Other Alternatives**

There are additional methods for conservation that do not allow the landowner to retain title to the land. Instead, these alternatives allow the owner to receive compensation and/or to continue living on the land for the remainder of his or her life. These include bargain or free market sale, planned gifts, reserved life estate, and an outright donation of land.
II. CONSERVATION EASEMENTS

As of the year 2000, local and regional land trusts in the United States are using conservation easements to protect approximately 2.6 million acres. A conservation easement is a less than fee simple interest in land that is either voluntarily donated or sold by a landowner to a government agency or nonprofit conservation organization. Easements are used to protect important open space, recreational, ecological, agricultural, or historic resources.

Most easements are granted in perpetuity and run with the land beyond the donor’s ownership. The terms of land use restrictions are negotiated between the property owner and the easement grantee following an analysis of the property and consideration of the landowner’s needs and use of the land. When an easement is deeded, it results in the legal division of the ownership and property rights. The organization receiving the donation will own designated land use rights which would otherwise threaten the significance of the property. Activities such as residential development, commercial and industrial uses, clearcutting, and overgrazing are commonly prohibited by an easement. After donation, the easement holder still retains title to the property and can continue to live on the land, but he can no longer exercise these restricted rights. It is also the holder’s responsibility to ensure that the terms of easement are not being violated. The legal basis for this type of ownership comes from common law as it is applied to the acquisition of rights-of-way.

The present economic situation makes it advantageous for property owners in need of tax relief to consider an easement if they are interested in continued use of their property while also preserving natural environments. The 2008 Farm Bill has extended the tax incentives for conservation easement donations through 2009. The incentive is applied to a landowner’s federal income tax and it raises the deduction for donating a voluntary conservation easement from 30% to 50% of his adjusted gross income in any year and increases the number of years over which a donor can take deductions from 6 to 16 years. Although these extended provisions have expired, there is legislation currently being sponsored in Congress to make the easement incentive permanent. At the state level, there is also the North Carolina Conservation Tax Credit Program which offers a tax credit equal to 25% of the fair market value of the donated property interest, up to $250,000 for individuals or $500,000 for married couples filing jointly, with any unused portion of the credit allowed to be carried forward for five years.

The government has taken a significant interest in conservation easement donations since the monetary size and visibility of easements have grown. Recently, several conservation easements in Colorado have resulted in indictments and have triggered audits and investigations. As a result, it is important to ensure that all laws are closely followed and a qualified appraiser provides a well-documented, reasonable valuation of land before an easement is donated. These precautions will help to ensure an easement is not contested in the future.

The following factors must be considered by any property owner who chooses to put his land under easement.
• Access: Who will have access to the property and when?
• Development Restrictions: How strict should they be?
• Improvements: Will any buildings be included in the easement? Can the owner renovate, remodel, remove, or build?
• Recreational Uses: Should it be passive-only?
• Owners’ Obligations: What will their responsibilities entail? Does everyone in the family agree? Will there be building envelopes (separation between the inside and outside of a structure) that will remain unrestricted?
• Qualified Appraisal: Be sure that the appraiser reviews the impact of the easement or donation on the values of both before and after the easement has been put into effect to accurately determine the donation’s amount.
• Local Land Trust: Determine the organization’s interest in the property as well as their funding needs and requirements.

Placing an easement on a single parcel of land might have broader implications for the entire surrounding area as well. Research has shown that newly protected conservation areas tend to cluster near preexisting protected areas, implying that the geography of contemporary conservation actions may be influenced by past decisions on land protection. However, the same study also found that there is no evidence to suggest that proximity to protected areas correlates with a reduced rate of nearby land development. Although this indicates that conservation efforts may not prevent development from continuing on surrounding land, many pieces of land are unique and warrant protection in it of themselves.

ADVANTAGES

There are numerous advantages to donating an easement that make it appealing to landowners and an effective conservation tool.8

Voluntary

Because donation is a voluntary act made by a landowner, it is considered an acceptable tool to regulate land use compared to government regulations and zoning restrictions.

Financial Compensation

There are financial benefits available for easement donors including tax relief for federal income, estate, and capital gains taxes.

Creative and Flexible

The terms of an easement are unique to each individual property and they can be designed based on the landowner’s wishes and the existing features and resources. Easements can be used to limit a single type of land use or they can be exceedingly complex.
Negotiation-Based
The easement donor and receiver can jointly decide the terms of the easement to ensure that its restrictions and enforcement are appropriate for both parties involved.

Permanence
Perpetual easements run with the land and the restrictions are deeded. This ensures that the land will be protected into the future, beyond the donor’s ownership.

Non-bureaucratic
Easements are typically donated to a land trust which allows a streamlined process for application and approval.

Open Space Protection
The primary purpose of an easement is open space protection. It can also be used to protect important agricultural lands and historical sites.

DISADVANTAGES
However, there are also several disadvantages that limit the use of easements. 8

Voluntary
Because easements require a voluntary donation, a landowner has the ability not to donate.

Financial Compensation
If landowners do not require tax shelter, there is less of a financial incentive to donate an easement. Also, some uncertainty exists in the permanence of tax laws that provide donation benefits.

Complex
The implementation of easements has a relatively high learning curve. Technical training is required which costs times and money, resulting in its more limited use by local planning departments.

Negotiation Skills
Negotiation experience is also necessary because the terms of an easement are established jointly by two parties.

Permanence
Perpetual monitoring and enforcement of an easement can be a burdensome responsibility that can be costly for land trusts or other agencies.
Lack of Coordination
Land trust efforts operate separately from local comprehensive planning efforts. Land trusts often have a single mission to protect as much land as possible. It is important that easements are compatible with the regional vision and land use planning and that appropriate properties are protected.

Obstruction of Development
Easements can restrict development on land that may be needed in the future to accommodate growth and expansion. Easements should be carefully planned and it is best if they do not prevent building in areas that are already served by expensive infrastructure or that are zoned for future development.
III. SUGAR COVE FARM

Sugar Cove Farm covers 181 acres of forested and agricultural land that lies in a secluded cove and forms an undeveloped corridor of land between the East Fork of the Pigeon River and Pisgah National Forest in Cruso, Haywood County, North Carolina. The Pigeon River drains Cold Mountain, the Shining Rock Wilderness Area, Pisgah National Forest, Mount Pisgah, and Frying Pan Mountain (See Appendix A, Photo 1-4).

Figure 1: Sugar Cove Farm Location Map (Source: Google Earth)

SITE HISTORY

The land that comprises Sugar Cove Farm was once inhabited by Native Americans during the Archaic Period. The Archaic Period dates back to 8,000 B.C. through 1,000 B.C., or 10,000 to 3,000 years ago.\(^{14}\) It was during this time that food gathering became more efficient and Archaic Indians developed more sophisticated tools for hunting and fishing.\(^{14}\) In the late Archaic, they also began cultivating plants.\(^{14}\)

During this period, Cherokee Indians had a large thriving village on what is now a 7.5 acre hay field in the northwest corner of the Sugar Cove Farm property. When the field is plowed for seeding, countless artifacts can be found in the fertile soil (See Appendix A, Photo 5). The land was originally named by the Cherokee Indians for the Maple Sugar Tree grove that once stood there centuries ago.
Following the Civil War, the property was part of a large tract of land owned by the Gynn Family of Wilmington, Delaware. The Great Depression forced the lease and eventual sale of the land to Columbia University. Columbia used the land to establish the University’s Teacher’s College, called New College, in 1933. New College was closed in 1939 and following in 1949, the Springdale School property auction put much of the property up for sale. It was at this auction that the current landowners purchased the 150 acres that comprise Sugar Cove Proper. Later in 1954, the existing family homestead was constructed on the property (See Appendix A, Photo 6-10). In 1960, the beef barn and hayfield were purchased, adding another 31 acres to the parcel. Today, residential and resort development is threatening to destroy the land’s aesthetic beauty, cultural history, natural resources, and agricultural productivity.

EXISTING CONDITIONS

Sugar Cove is a working farm that is part of the Haywood County Voluntary Agricultural District. There are 30 head of cattle currently being raised on the farm. The cattle rely on the hay grown in the hay field and grass from the open pasture for food. The family grows a small vegetable garden each year.
Hickory, Cedar, and Maple trees are also located throughout the property. Although there are no logging activities occurring on the property at present, the trees do have the potential to be harvested for valuable lumber in the future.

There are six existing structures located on the property. The largest structure is the family homestead which is approximately 1,380 square feet of heated space. The five remaining buildings are farm accessory structures. These structures include a beef barn, sheep barn, chicken coop, tractor shed, and equipment shed.

![Figure 3: Sugar Cove Farm parcel boundary (Source: Haywood County Tax Department)](image)

There is one paved entrance that utilizes a 15-foot right-of-way on the western-most edge of the parcel and connects to the driveway. There are also two additional rights-of-way located on the northwestern corner of the property that are currently unpaved. One is a 30-foot right-of-way along Cherokee Lane that leads to the back of the hayfield from Interstate US-276. The second is an unnamed 20-foot right-of-way that leads from Cherokee Lane to the barn and cattle feed lot. These rights-of-way make the property even more desirable for development because they provide good access to the parcel from three different entry points.

**NRCS Conservation Plan**

The USDA Natural Resources Conservation Service (NRCS) works in cooperation with local Soil Conservation Districts to develop conservation plans for landowners free of charge. A conservation plan is a tool that is designed to help a landowner better manage the natural resources on his farm. An NRCS conservation plan has been prepared for Sugar Cove Farm to evaluate the soil, water, air,
plant, and animal resources on the property. The plan also offers several management alternatives to address the specific resource conditions found on the property and to protect the surrounding environment. Following the plan helps protect the farm’s soil and agricultural productivity, improves water quality, and attracts wildlife.

The NRCS conservation plan is intended to help a landowner better understand his land, its soil, and the production capability. It is entirely up to the landowner to decide what changes will be made to protect and improve the land. The landowner can develop his own schedule to implement any needed conservation practices and there are USDA farm programs, as well as state and federal cost share assistance programs, available to help fund these projects. Assistance is available for controlling soil erosion; stream bank protection; pasture and woodland improvements; and managing animal waste, wildlife habitat, or irrigation water management.

**Soil and Water Conservation Assistance**

Soil and Water Conservation Assistance (SWCA) is a voluntary program that provides farmers cost share payments to address threats to soil, water, and related natural resources. The Federal share of SWCA funding provides 75% of the actual cost of an approved practice which is paid upon certification of completion of the practice and delivered by the NRCS. To be eligible for SWCA funding, an applicant must own or control land and agree to implement specific conservation practices.

There are two active SWCA cost share projects at Sugar Cove Farm. The contract periods run from 2006 to 2011. The projects are intended to reduce stream pollution from the cattle feed lot and protect water quality. The projects included constructing a fence around the feed lots and boring a well to provide the cattle with drinking water. These projects prevent the cattle from using the stream and contaminating the water.

**NC Forest Service Stewardship Plan**

Forestland makes significant contributions to the quality of life and the economy in North Carolina. Over $17 billion worth of manufactured forest products are shipped out of the state annually and an additional $10.1 billion is generated by recreation, travel, and tourism activities. In order to maintain and improve the health of forests, the North Carolina Forest Service has created the Forest Stewardship Program as a cooperative effort to help landowners manage forested private property. The program is voluntary and participants receive educational, technical, and financial assistance to develop a stewardship management plan that is based on their own objectives, as well as wise use and conservation principles, and is intended to enhance the forest for wildlife, soil and water quality, timber production, recreational opportunities, and natural beauty.

Sugar Cove Farm participates in the Forest Stewardship Program. As a result, a long-range resource management plan has been developed to guide forest management on the property. Not only is the property eligible for many cost share programs related to forest management, protection, and enhancement such as reforestation or timber stand improvement efforts; the landowners may also be
entitled to financial assistance from the Stewardship Incentives Program for certain practices specified in the plan. Additionally, many landowners find they are able to maximize returns from forestland with the aid of the recommended management techniques by improving the productivity of their land.

Participation in this program reduces the market value of the property by 70%. The appraised market value of the property is $427,095, with the home valued at $96,560 and the land valued at $379,770. However, the assessed value is only $149,235, which equals a deferred value of $327,095 (See Appendix B).
IV. LOCAL CONTEXT

HAYWOOD COUNTY

Haywood County was first established in 1808 and it is located amongst the Blue Ridge Mountains in western North Carolina.20

The county is home to part of the Great Smoky Mountains National Park which is the most visited National Park in the United States.20 Other mountain ranges located within the county include the Balsam Mountains and the Nantahala Mountains.20 The Nantahala National Forest, North Carolina’s largest national forest, is another major natural attraction in the county.20 There is also a strong history of arts and crafts in Haywood County and the area has recently been designated a Blue Ridge Heritage Area.20

DEMOGRAPHICS

Haywood County currently has a population of about 57,000 residents, making it the third most populated county in western North Carolina behind Buncombe and Henderson Counties.20 From April 2000 to July 2008 there was a 4.7 percent increase in population.21 However the county is aging, with a median age of 43.7 and 20.1% of the population above the age of 65 as of 2008.22 The county also lacks racial diversity with 96.8% white, 1.3% Black, and less than 0.5% of any other single race.22 The most densely populated portions of the county are located around US Interstate 40 and the largest town and county seat, Waynesville.20
DEVELOPMENT

Haywood County encompasses over 64,000 acres of farmland which generates over $17 million from livestock, dairy, and crop production.\textsuperscript{23} Farming remains an important part of life and the economy in Haywood County, but it is currently threatened by encroaching non-farm development. The new growth and development in Haywood County, is largely driven by local tourism. In addition to scenic views and recreational activities, six golf courses draw tourists from across the country to the county.\textsuperscript{24} One of these courses, Springdale Country Club, is located just northwest of Sugar Cove Farm one parcel over from the property (See Appendix A, Photo 11-12). Springdale Country Club is a 550-acre development that boasts a golf course, resort, home sites, and mini estates. The country club has been attracting golfers to the area for over 40 years and it claims to be “the best golf retreat in the mountains.”\textsuperscript{25} Skiing, hiking, rafting, other outdoor activities, entertainment, and cultural heritage are also attractions that draw large number of tourists to the western mountains.\textsuperscript{26}
An increasing number of gated communities are also being developed in the area to serve as secondhomes for wealthy families or vacation homes. These houses remain vacant for the majority of the year and do little to benefit the economy since they do not generate a consistent increase in local spending for groceries and other living expenses. Robert Graves, one of the preliminary home builders in Hilton Head, South Carolina, has started one such development called Cold Mountain. Cold Mountain is an upscale gated community located opposite from the entrance of Sugar Cove Farm across US-276 (See Appendix A, Photo 13). A $2 million bridge has been constructed to provide access to the site across the East Fork of the Pigeon River (See Appendix A, Photo 14). There are 77 houses planned in the development, many of which have already been sold (See Appendix A, Photo 15). However, although a few structures have been completed, the developer is currently bankrupt and no further development has progressed.

Blue Ridge Papers Incorporated, Haywood County’s largest industry, is another large driver of the local economy. The company operates a pulp and paper mill, a plastic-coating extrusion facility, and four packaging plants employing over 2,000 workers. Although the mill provides jobs for many residents, it is also a source of contention and has been the topic of many environmental studies and debates concerning pollutants, especially dioxide, in the Pigeon River.
FARMLAND PRESERVATION ORDINANCE

There are currently two options available under the Farmland Preservation Ordinance that Haywood County landowners can use to protect their land from encroaching development. The options include joining the Voluntary Agriculture District or the Enhanced Voluntary Agriculture District.

Voluntary Agriculture District

The Voluntary Agriculture District (VAD) was established in Haywood County in 1994. The purpose of this district is to preserve and protect farmland, forestland, and horticultural land from non-farm development. To be eligible for the VAD, the land must:

1. Be part of present use value taxation program
2. Be managed in accordance with the USDA Natural Resource Conservation Service guidelines with respect to highly erodible land
3. Be subject to a conservation agreement with the county that prohibits non-farm use or development for a 10-year period of not more than three lots which meet applicable county zoning and subdivision requirements

In exchange for agreeing to these development restrictions, the land will qualify for the following benefits:

1. Educational signage to public the land’s VAD status
2. Increased protection from nuisance lawsuits
3. Waiver of water and sewer assessments if the property is not connected to county water and sewer systems
4. Required public hearings for proposed condemnation
5. Eligibility for farmland preservation funds

This agreement can be revoked at any time by the landowner.

Enhanced Voluntary Agricultural District

The Enhanced Voluntary Agricultural District (EVAD) was passed for Haywood County on March 5, 2007. This program has the same eligibility requirements as the standard VAD as well as:

1. Inability to revoke the 10-year conservation agreement with the county which is automatically renewed every 3 years
2. May receive up to 25% of gross sales from the sale of nonfarm products and still qualify as a bona fide farm
3. Be eligible to receive a higher percentage of cost-share funds up to 90% assistance under the Agricultural Cost Share Program

The following indirect benefits are also enjoyed by landowners who join the EVAD:
1. Opportunity to stabilize the use of land while considering longer-term options such as permanent working land conservation easements
2. Fewer unsolicited requests from developers to sell the property
3. Protecting the rural economy and rural heritage of the county
4. Maintaining scenic views; the availability of fresh produce and local farm products; wildlife habitat; clean air and water; lower traffic levels; and reduced need for infrastructure

NORTH CAROLINA AGRICULTURAL DEVELOPMENT AND FARMLAND PRESERVATION TRUST FUND

In 2005, the North Carolina General Assembly passed “House Bill 607”, establishing the Agricultural Development and Farmland Preservation Trust Fund (ADPF Trust Fund).

1 The purpose of the Trust Fund is to support the agriculture industry by offering grants to fund the purchase of agricultural conservation easements and other projects that encourage the preservation of agricultural, horticultural, and forestlands.

1 Funding priorities are given to projects that involve counties with Farmland Protection Plans, farmers in Enhanced Voluntary or Voluntary Agricultural Districts, and other groups or individuals with conservation or management plans. The maximum grant awarded depends on the potential beneficial impact of the proposed project, the resources available, and the needs of the project to be served. Preference is given to projects that protect whole farm units rather than partial acreage. Non-profit conservation organizations must match a minimum of 30% of ADFP Trust Fund grant money received.
**V. SOUTHERN APPALACHIAN HIGHLANDS CONSERVANCY**

The Southern Appalachian Highlands Conservancy (SAHC) is one of the oldest and most respected land trusts in the nation. SAHC works to protect and preserve ecosystems in the mountains of western North Carolina and east Tennessee. The organization accomplishes its conservation objectives by forging and maintaining relationships with landowners, public agencies, and communities. These partnerships have ensured the preservation of almost 50,000 acres of land throughout the Appalachian region. The organization hopes to continue conserving the “unique plant and animal habitat, clean water, local farmland and scenic beauty of the mountains in the region.”

**HISTORY**

In the early 1950s, the Appalachian Trail Conference (ATC) replaced 24 miles of the Appalachian Trail in Tennessee with 72 new miles of trails. The new trails traversed from the top of Roan High Knob and Roan High Bluff across Carvers Gap to the Roan Highlands.

![Appalachian Trail Map](Figure 7: Appalachian Trail Map (Source: National Park Service www.nps.gov/appa/planyourvisit/brochures.htm))

The ATC realized that focusing its efforts on protecting the Appalachian Trail corridor would not be enough to preserve the integrity of the Roan and Southern Appalachian Highlands. In 1974, the members formed SAHC as an independent, nonprofit land trust to pursue even greater conservation goals and to act as a steward to the land.

**PRIORITY PROTECTION AREAS**

Protecting the Highlands of Roan from encroaching development is SAHC’s main objective; however, it also works to conserve other areas of the Southern Appalachians that share many of the same qualities.
as the Roan. Because unprotected areas are at risk of being damaged and lost forever, the Conservancy has identified five priority areas to focus its efforts.

![Map of SAHC Priority Protection Areas](source: Google Maps and SAHC)

Figure 8: Map of SAHC Priority Protection Areas (Source: Google Maps and SAHC)

**Highlands of Roan**

The founders of SAHC developed a conservation plan for the Roan that focused on acquiring one tract of land a time. Currently, over 15,000 acres are being protected in this area, but approximately 9,000 acres in the Highlands of Roan remain unprotected. SAHC has made it a priority to secure several sites near the Appalachian Trail and protect additional sites within the Yellow Mountain State Nature Area.

**Great Smoky Mountain and Balsam Mountains**

SAHC has targeted the high-altitude ridges bordering the Great Smoky Mountains National Park in Haywood and Jackson Counties in North Carolina. This land has long been used for farming, hunting, and fishing and the Conservancy hopes to ensure these activities can continue. This protection area extends north and south of the Pisgah Ridge along the Blue Ridge Parkway. SAHC has already protected almost 11,000 acres of watersheds, streams, and forests in this area.
Newfound and Walnut Mountains

Another priority protection area extends northwest of Asheville, North Carolina to the Appalachian Trail on the Tennessee state line. This area, in the Newfound and Walnut Mountains, is made up of ridge-top meadows, forested coves and slopes, and bottomland farms. The population growth in Asheville is threatening the area and SAHC has been able to protect over 8,000 acres of land thus far.

Black and Craggy Mountains

The Black and Craggy Mountains are located northeast of Asheville, North Carolina and include areas located in the Pisgah National Park and Mount Mitchell State Park. This area is the longstanding cornerstone of conservation efforts in North Carolina and SAHC has already protected almost 10,000 acres of land in this area.

Appalachian Trail and the Mountains of East Tennessee

There are several areas along the Appalachian Trail that SAHC has deemed worth of protection. These include a historic farm by Sampson Mountain and the Unaka Mountain Wilderness Area. Over 4,000 acres of scenic and recreational areas have been protected in this region.

FARMLAND PRESERVATION PROGRAM

The SAHC Farmland Program offers professional guidance for landowners who are interested in permanently protecting their farmland from development. The mission of the program is to preserve agricultural land within the service area of the Southern Highlands Appalachian Conservancy. William Hamilton is the SAHC staff member charged with managing the Farmland Program. To date, 3,000 acres of working farmland have been protected under this program including Claxton Farm in Flat Creek, NC; Bee Branch Farm and the Duckett Family Farm in Sandy Mush, NC; and Hickory Nut Gap Farm in Fairview, NC.

HICKORY NUT GAP FARM

Hickory Nut Gap Farm is a 600-acre farm located in Fairview, Buncombe County, North Carolina (See Appendix A, Photo 16). The farm straddles the designated Drovers Road scenic highway and the historic Sherrill’s Inn serves as the centerpiece of the farm. The property is owned by the Clarke Family and is in a prime location for development which could have proven very lucrative for the family. Instead of developing the land, the family devised a creative plan that put 290 acres of the property, part of which is a working farm, under easement. The family has also expressed an interest in protecting up to 800 more acres of land in the future.

There are six living children in the Clarke family who own the farm under the name of the McClure Clarke Family Limited Partnership. The original farm dates back to the first settlers who crossed the Blue Ridge Mountains following the Revolutionary War. Initially, the farm produced various grains, apples, hogs, sheep, and beef cattle. Soon after World War II, it shifted to a dairy operation which
continued until 1988. For the past seven years, Spring House Natural Meats has been raising grass-fed beef, pastured pork, turkeys, chickens, and sheep on the farm. In 2008, Flying Cloud Farm expanded onto part of the property which produces a variety of vegetables.

Today, the farm is recognized as one of the region’s most historic and scenic farms that provides fresh produce and other products to local grocers, restaurants, and individuals. Hickory Nut Gap Farm provides the opportunity for the continued production of healthy meats, fruits, and vegetables. The farm not only enables a successful family farming business, but also provides a place where people can connect with their rural heritage and offers open space for both wildlife and scenic beauty. Allowing the farming operations to continue under a perpetual agricultural easement not only benefited the Clarke family, but it also protected some of the best farmland in Buncombe County.

The NC Agriculture Development and Farmland Preservation Trust Fund awarded the Southern Appalachian Highlands Conservancy $703,500 to match contributions from Buncombe County, private donors, and the landowners to protect 110 acres of the farm. The easement for the remaining 180 acres of land was financed by a private donor. SAHC worked with the landowners to develop a plan that provided compensation to family members who did not wish to farm the land, while also providing security in the future for those family members who did want to continue farming. The plan utilized 20 acres of land located adjacent to the farm that were also owned by the Clarke family but listed under a separate tax parcel. This became the site for 6 homes, each built on 1.5 acre lots, that were sold for profit. These houses were built in a cluster and they share 11 acres of common space on which an apple orchard is planted. This design structure prevents any further development since the open space is jointly shared by the new landowners.

Hickory Nut Gap Farm serves as a good model for Sugar Cove Farm because valuable farmland was able to be protected even though certain family members were not interested in preservation or farming.
VI. RECOMMENDATIONS

Sugar Cove Farm has significant historic, scenic, natural, and ecological value that warrants preservation. Placing an agricultural conservation easement on the property will ensure these values are protected by allowing the landowners to limit subdivision and non-agricultural development while still retaining ownership of the land. A perpetual easement will ensure that the farm remains undeveloped permanently; but it can be structured to allow the family, and future generations, to continue the tradition of agrarian living that extends as far back as the Archaic Period. Donation of an easement will also qualify the landowners to receive a federal income tax charitable deduction as well as a reduction in the value of property for estate tax purposes. There are also state conservation tax credits available in North Carolina for donations of easements for conservation purposes.

As a member of the Haywood County Voluntary Agricultural District, it is very feasible that funding from the Agricultural Development and Farmland Trust Fund will be awarded to help preserve Sugar Cove Farm. Additionally, the farm is located adjacent to the Southern Appalachian Highland Conservancy’s Great Smoky Mountains and Balsam Mountains priority protection area and the Conservancy will be able to work with the family to develop a creative easement which meets the expectations of all family members. SAHC has also proven itself to be a highly successful conservation organization that is capable of protecting working farmland.

If there are family members who oppose conservation, the most feasible option is to dedicate one, three-acre home site to each family member. Each person will then have a piece of land in his or her name which can be sold or kept for personal use. The remaining land can then be put under an agricultural easement. It is important that further subdivision of these sites is restricted in the deeds and only one house is built on each lot. If the subdivided lots are built close to one another, they can share common open space to prevent further development as was done at Hickory Nut Gap Farm.

However, if agreement cannot be reached among the family members, participation in the NC Forest Stewardship Program and SWCA cost share program continues to ensure appropriate environmental management without an easement’s protection. Participation will also keep property taxes low, allowing farming and forestry operations to continue in the face of increasing development pressures.

SITE SUITABILITY ANALYSIS

A site suitability analysis was conducted to determine where three home sites can potentially be located on the property. The analysis considered soil types, slope, and land cover. No development will be permitted on the hayfield or cattle feed lot because these two areas are critical for agricultural activities to continue on the farm. Also, existing structures should not be disturbed by any subdivision because the homestead can be considered an historic building and the accessory structures may serve useful to farming operations. Additionally, the forested land on the parcel should be affected by the subdivision as little as possible because the trees are essential to future forestry and sustainable timber management. If feasible, the new lots should also be located in close proximity to at least one
of the three rights-of-way or the existing driveway. This will limit the need for paving new roads on the property and reduce road and infrastructure construction costs.

Soil type and slope steepness are the most limiting factors in determining site suitability because development is restricted on slopes with a 15% grade or higher and on soil that is unstable. There are 15 soil types found on the property. These soils are classified by the Natural Resources Conservation Service as “not limited”, “somewhat limited”, or “very limited” for development of a dwelling unit based on their soil type and typical slope gradient (See Appendix C and D).
Based on these restraints, a suitability analysis was performed using the following classification system:

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<th>Land Cover</th>
<th>Soils</th>
<th>Development Limitation</th>
<th>Suitability Measure</th>
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<tr>
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Figure 10: Sugar Cove Farm Soil Suitability (Source: Haywood County Land Records/GIS Department)
Open space with soils and slopes “not limited” for development is classified as very suitable and is shown in green on the suitability map. These are the best locations for future house sites. Open space with soils and slopes “somewhat limited” for development are classified as suitable and are shown in yellow on the map. These sites also have the potential for development. Forested land with soils and slopes “not limited” or “somewhat limited” for development are considered somewhat suitable and are shown in orange. Although development can occur on this land, it is not recommended in order to preserve trees. Finally, any land with soils and slopes “very limited” for development or with existing structures is classified unsuitable and is shown in red. No development should occur on these areas.

Figure 11: Development Suitability Map (Source: Haywood County Land Records/GIS Department and NC One Map)
The suitability analysis shows that the best areas for potential development are located in the northwestern corner of the property. These areas are also a short distance to all three rights-of-way; however, they are also directly adjacent to the beef barn and cattle feed lot. This proximity to the cattle would create noise and odor disturbances for any future residents.

Instead, it is recommended that the house sites are built on the large portion of land that is classified as suitable in northeastern corner of the parcel. Not only is this land cleared open space, it is also located near the existing homestead and driveway. This will allow for more clustered development which will reduce the need for paving and cause minimal disruption and environmental impacts.

Figure 12: Recommended areas for house sites (Source: Haywood County Land Records/GIS and NC One Map)
There is another smaller area located along the southeastern edge of the property that is also suitable for development. However, because it would be difficult to provide access to this area unless another right-of-way could be obtained from the neighboring landowners, it is not recommended for the house sites.

It is important to note this suitability analysis is only a recommendation that considered limited factors and any subdivision must be approved by the Haywood County Planning Department following the Subdivision and Pre-development Ordinance.

**RECOMMENDED EASEMENT RESTRICTIONS**

An easement should be designed that will allow continued agriculture and forestry as well as some limited development on Sugar Cove Farm. The easement however, must limit further subdivision beyond the additional home sites for each family member. Restrictions should also be placed on the size of allowable lots, limiting lot size to three acres. In addition to the house sites, the easement should permit construction of accessory structures that are necessary to support the agricultural and forestry activities on the property. Because all existing structures will be preserved, the need for new structures will be limited but it is a measure that should still be addressed in the easement restrictions. Specific recreational activities must be excluded from the restrictions to allow the landowners to continue hiking, hunting, and fishing on the property. The easement should also maintain the property as private and restrict any public use of the land without permission from the landowners.
VII. NEXT STEPS

THE PROCESS

There are ten basic steps that need to be taken in order to donate a conservation easement. 8

Step 1: Initial Meeting with Landowner

During the initial meeting, the landowner and a representative from the organization receiving the easement tour the property. The land will be evaluated to determine if it is eligible for easement protection and the owner’s willing to donate an easement is also assessed.

Step 2: Landowner Consults Advisers

The landowner typically will then meet with a legal and/or financial adviser. This meeting will ensure that the landowner is fully aware of the typical terms of restriction placed on the land under easement as well as the tax incentives that exist. The cost of these consultations is fully tax deductible as long as the easement is later conveyed.

It is important that the landowners hire an adviser who is familiar with the donation of conservation easements. Sometimes, lawyers or accountants who are unfamiliar with easements react negatively to the concept. The landowners should establish a list of restrictions they do and do not want to put on the land before this meeting.

Step 3: Title Information

The landowner will then obtain an up-to-date title report. If only a portion of the property is proposed for an easement, a survey must be conducted to divide the parcel accordingly. If only a portion of the property is put under easement, the landowner may still subdivide and develop the land directly adjacent to the land under easement.

This will be a critical step if an easement is donated especially if there are family members who are interested in selling the farm and are opposed to an easement. A creative plan may be necessary that allows several homesteads to be developed for sale before an easement will be considered an agreeable option for all family members.

Step 4: Baseline Study and Qualification

Before an easement donor can claim federal tax deductions from an easement, a parcel of land must meet four qualification categories described in the Tax Treatment Extension Act of 1980. These include: recreation, ecological, open space, and historic purposes and benefits.

Qualification is best accomplished with the systematic gathering of baseline data on the characteristics and condition of the property. Field work often includes creation of vegetation and soil maps, wildlife
observations, and inventories of existing structures and improvements. Easement restrictions will then be drawn based on the established property features.

**Step 5: Negotiation Easement Restrictions**

Easement restrictions usually address basic types of land use but avoid everyday land management issues. The land use categories that are typically addressed include: agriculture, residential use and subdivision, commercial and industrial use, mineral extraction, and recreational use. Good easement negotiations will eliminate destructive land use options, anticipate future conflicts, and clearly define restrictions.

Typically, easement receivers want to prohibit all future development and subdivision. However, if new structures are proposed in areas that are not “red-flagged” in the baseline report, future development is still feasible.

**Step 6: Easement Appraisal**

An independent, certified land appraiser must be hired to determine the monetary value of the land use rights to be donated. In general, the more rights that are transferred, the greater the value of potential tax benefits to the landowner. There are four general aspects of potential tax savings: federal and state income taxes, capital gains taxes, property taxes, and estate taxes.

In cases where there is little market for an isolated parcel, a conservation easement may only provide minimal tax savings. However, if there is strong development pressure in the area, a conservation easement will likely provide substantial tax savings for the landowners.

**Step 7: Notify Local Planning Board**

Although the approval of a planning board or governing body is not required since an easement is a free market transaction, the most effective land trust easement programs are aligned with local comprehensive planning goals and conservation strategies.

**Step 8: Easement Finalized**

The next step is to prepare the final conservation easement deed. At this time, a back-up grantee may be designated to receive the easement if the original grantee organization should cease to exist.

There are many other state and national land trusts that could serve as a back-up grantee for easements in North Carolina. Possible land trusts include: Conservation Trust for North Carolina, North American Land Trust, American Farmland trust, and The Nature Conservancy.

**Step 9: Easement Deed Filed**

The conservation easement deed must then be recorded as a perpetually binding legal document in the local clerk and recorder’s office. The baseline report will also be filed as a record of the property’s condition at the time of conveyance. After the deed is filed, tax benefits begin for the landowner.
Step 10: Stewardship

The landowner and easement receiver will share land stewardship responsibility. Not only is the individual who granted the easement legally bound to honor the easement, so are all subsequent owners of the land. The land trust should inspect the land at least once a year to monitor violations. Failure to monitor is legally considered abandonment of the easement.

If a violation of the easement restrictions does occur, negotiations must be undertaken to correct the problem. If negotiations fail, the easement holder can take the landowner to court for breach of contract. This is extremely rare, however, due to landowners’ commitment to the environment and harsh penalties for violations.

Easements can be rescinded in the future if, through no fault of the landowner, the original purpose of the easement can no longer be met. One such example is if residential development occurs on adjacent lands and permanently disrupts the conservation efforts on a parcel under easement. The easement holder and landowner have the ability to jointly petition the district court to dissolve the easement. It is also important to note that conservation easements do not block eminent domain actions.


VIII. IMPLICATIONS FOR FUTURE CONSERVATION EFFORTS

According to the 2007 North Carolina Department of Agriculture and Consumer Service Agricultural Census, there are 707 working farms in Haywood County across 56,212 acres of land. These farms face similar development pressures as Sugar Cove Farm and agricultural conservation easements can ensure this land remains in agriculture, supporting both the county and state economy.

Conservation easements are one of the most popular conservation tools used by land trusts in the United States. Easements allow conservation organizations to extend their limited budgets by protecting important private land and targeting specific development rights without relying on land acquisition and paying expensive purchasing fees. Because easements are efficient and effective, it is important that land trusts and conservancies are able to target landowners with a high likelihood of donating.

EDUCATIONAL OUTREACH

Conservation organizations should undertake targeted outreach efforts to find landowners who are willing to donate easements on ecologically significant land. Presentations and pamphlets should be made available to the public to promote the importance of conservation and emphasize the benefits of donating an easement on private land. These efforts will help people better understand that easements are win-win agreements in which landowners are able to conserve their land, gain potential tax benefits, protect wildlife, and maintain scenic landscapes for future generations while still retaining property ownership and exclusive use of their land.

Families who own sizeable tracts of land with a long history of landownership are likely candidates for easement donation. It is important that targeted donors have a strong relationship and connection to the land because they are more likely to be invested in its preservation. Families who are interested in ensuring their children or grandchildren can inherit their property in its entirety are also good candidates for easement donation.

In addition, organizations can work with private landowners to host walks or hikes on land that is already under easement. These activities will not only work to bridge the gap between private conservation efforts and public recreational opportunities, but they will also make people more aware of the environment, natural resources, and amenities that are at risk of being developed without preservation.

PLANNING

Planning for agriculture is just as important as planning for development because it protects farms, forest land, and open space from other uses. Working farms and forests provide communities with a range of benefits including economic, environmental, cultural, open space, and fiscal amenities as well.
as a local supply of food and natural resources.\textsuperscript{32} There is an increasing need for collaboration between local governments and landowners to protect these working lands.\textsuperscript{32} The Haywood County Planning Department can use comprehensive planning, zoning, subdivision ordinances, right-to-farm laws, taxes, and special purpose land use ordinances to guide development, support farm operations, and conserve land.\textsuperscript{32} Good planning will ensure a balance of new development, essential services, and protection of the environment.

Although the county government is willing to work with local land trusts and land conservancies, conservation efforts need to be expanded beyond the farmland preservation ordinance and voluntary agricultural districts. The county comprehensive plan should also be made widely available to allow conservation organizations to align their work with county planning. If regional conservation efforts are better coordinated with one another, they will be able to contribute to public recreation opportunities rather than only serving private interests. Land use planning is critical to regional efforts to provide open space while also managing development.\textsuperscript{32} Because easements often limit public access, other efforts should also be undertaken by the county government to preserve important lands that will serve the public and further private conservation efforts at the same time.
APPENDIX A: PHOTOGRAPHS (TAKEN MARCH 6, 2010)

Photo 1: East Fork of the Pigeon River
Photo 2: Cold Mountain
Photo 3: Mount Pisgah
Photo 4: Pisgah Ledge
Photo 5: Hay Field and Barn
Photo 6: Sugar Cove Entrance
Photo 7: Homestead

Photo 8: Front Drive

Photo 9: Backyard

Photo 10: Southeastern Property Line

Photo 11: Springdale Country Club

Photo 12: Springdale Gulf Course
Photo 13: Cold Mountain Entrance
Photo 14: Cold Mountain Bridge
Photo 15: House in Cold Mountain
Photo 16: Hickory Nut Gap Farm
APPENDIX B: TAX REPORT FOR SUGAR COVE FARM

Source: Haywood County Tax Department GIS
# APPENDIX C: NRCS SOIL REPORT

## Dwellings and Small Commercial Buildings

Haywood County Area, North Carolina

[Onsite investigation may be needed to validate the interpretations in this table and to confirm the identity of the soil on a given site. The numbers in the value columns range from 0.01 to 1.00. The larger the value, the greater the potential limitation. The table shows only the top five limitations for any given soil. The soil may have additional limitations.]

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### Dwellings and Small Commercial Buildings

Haywood County Area, North Carolina

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# Dwellings and Small Commercial Buildings

Haywood County Area, North Carolina

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APPENDIX D: SOIL CLASSIFICATION MAP

Legend

Parcel Boundary

Soil Classification

- BkC2
- DeA
- DsB
- EdC
- EdD
- EdE
- EdF
- EvD
- EvE
- PwE
- PwF
- ScB
- SdC
- SdD
- TvE

Source: Haywood Count Land Records/GIS Department
REFERENCES


