

CONSERVATION EASEMENTS AS TOOLS FOR HEIRS' PROPERTY OWNERS

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This Article explores how conservation easements can support families who own heirs' property, a common but unstable form of land co-ownership. Heirs' property is vulnerable to involuntary land loss resulting from tax foreclosure and partition sales. This land loss undermines generational wealth-building and threatens cultural ties to land. Conservation easements, a type of land servitude, offer financial benefits, deter predatory investors, and can help ensure that land is used in accordance with the owners' long-term goals. While conservation easements are not a catch-all solution to the underlying problems accompanying heirs' property ownership, they are one valuable tool within a broader framework of policy reforms and strategic land planning.

I. INTRODUCTION

Heirs' property is a common and unstable form of family land co-ownership, typically created when land passes to multiple family members through intestate succession.¹ Families face difficulties with financing, improving, and protecting their land, but may share a goal of maintaining joint ownership across generations.² This Article explores how conservation easements, a type of land servitude, can support this goal by preserving culture and heritage, providing financial and tax benefits, deterring predatory investors, and incentivizing sustainable land use.

This Article references North Carolina law at some points in order to provide examples from a state with a large amount of heirs' property.³ North Carolina has not adopted the Uniform Partition of Heirs' Property Act, a model

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¹ *Introduction to HEIRS' PROPERTY AND THE UNIFORM PARTITION OF HEIRS PROPERTY ACT: CHALLENGES, SOLUTIONS, AND HISTORIC REFORM* xix, xix-xxi (Thomas W. Mitchell & Erica Levine Powers, eds., 2022) [hereinafter *Introduction to CHALLENGES, SOLUTIONS, AND REFORM*].

² Janice F. Dyer & Conner Bailey, *A Place to Call Home: Cultural Understandings of Heir Property Among Rural African Americans*, 73 RURAL SOCIOLOGY 317, 320 (2008).

³ THE Hous. ASSISTANCE COUNCIL, [A METHODOLOGICAL APPROACH TO ESTIMATE RESIDENTIAL HEIRS' PROPERTY IN THE UNITED STATES](#) 21 (2024) [hereinafter HOUS. COUNCIL].

law designed to reduce involuntary land loss by reforming the legal partition process.⁴ Therefore, strategic tools to help families navigate land co-ownership could be particularly valuable in North Carolina.

Part I provides an overview of heirs' property, involuntary land loss, and challenges with accessing the benefits of this land. Part II explains how culture based in land co-ownership relates to heirs' property ownership, emphasizing tools that can support families, including policy reform, assistance from organizations, and land management instruments. Part III explores how conservation easements can support family landowners.

II. OVERVIEW OF HEIRS' PROPERTY

Heirs' property refers to land co-owned by multiple family members as tenants in common, usually due to intestate succession.⁵ It is generally characterized by legal uncertainty over ownership.⁶ Under a tenancy in common, each co-tenant holds an undivided interest and a right to possess the entire property.⁷ If a co-tenant in common dies with a will, their devisees inherit their interest.⁸ If a co-tenant dies without a will, their heirs inherit the interest through intestate succession.⁹

Because tenancy in common allows each co-owner's interest to pass to their devisees or heirs, the total number of owners can increase significantly over

⁴ UNIF. L. COMM'N, [UNIFORM PARTITION OF HEIRS PROPERTY ACT](#) 1 (Prefatory Note) (2010) [hereinafter UNIFORM ACT].

⁵ *Id.* at Prefatory Note, § 2(5).

⁶ *Id.*; see also Thomas W. Mitchell, *Historic Partition Law Reform: A Game Changer for Heirs' Property Owners* in [HEIRS' PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT](#) 67-68 (Cassandra J. Gaither et. al., eds., 2019) [hereinafter HEIRS' PROPERTY AND LAND FRACTIONATION] 67-68.

⁷ Mitchell, *supra* note 6, at 67; *Tenancy in Common*, BLACK'S LAW DICTIONARY (9TH ED. 2009).

⁸ *Id.*; N.C. GEN. STAT. § 41-81.

⁹ *Id.*

generations.¹⁰ This can cause fragmented and legally uncertain ownership, making it difficult to finance, insure, or develop these properties (i.e., heirs' property).¹¹

Heirs' property is common in the United States, particularly in the Southeast and Appalachian regions, and among Native American and Black communities.¹² Nationwide, its estimated total value is \$32 billion.¹³ In North Carolina, heirs' property is widespread, especially along the coast, with an estimated value of \$5.5 billion, making up nearly 2% of all properties in the state.¹⁴

A. Heirs' Property and Land Loss

Heirs' property is a highly unstable and insecure form of land ownership, and its owners (i.e., heirs) are vulnerable to involuntary land loss.¹⁵ This involuntary land loss disproportionately affects Black-owned property.¹⁶ Over the past century, Black-owned land ownership has declined by roughly 90%.¹⁷ One estimate values the Black-owned land lost between 1920 and 1997 at \$326 billion, with much of it being heirs' property.¹⁸ Primary causes of the involuntary heirs' property land loss include tax foreclosure sales and partition actions.¹⁹

¹⁰ Faith River James, *Inequity In Equity: The Tragedy of Tenancy in Common For Heirs' Property Owners Facing Partition In Equity*, 17 TEMP. POL. & CIV. RTS. L. REV. 65, 66 (2019).

¹¹ *Id.*; Thomas W. Mitchell, *The Uniform Partition of Heirs Property Act: Advancing Social and Racial Justice Through Historic Property Law Reform*, in HEIRS' PROPERTY AND THE UNIFORM PARTITION OF HEIRS PROPERTY ACT (Thomas W. Mitchell & Erica Levine Powers eds., 2022).

¹² Ryan Thomson & Conner Bailey, *Identifying Heirs' Property: Extent and Value Across the South and Appalachia*, 38 J. RURAL SOC. SCIS. 29, 30 (2023); Cassandra Johnson Gaither & Stanley J. Zarnoch, *Unearthing 'Dead Capital': Heirs' Property Prediction in Two U.S. Southern Counties*, 67 LAND USE POL'Y 367, 371 (2017).

¹³ HOUS. COUNCIL, *supra* note 3, at 5.

¹⁴ *Id.*; Kurt Smith et al., [Heirs' Property in North Carolina: What is It and Why Should I Care?](#), NC STATE EXTENSION (Mar. 24, 2025) .

¹⁵ *Introduction to CHALLENGES, SOLUTIONS, AND REFORM*, *supra* note 1, at XIX.

¹⁶ Lizzie Presser, [Kicked off the Land: Why So Many Black Families are Losing Their Property](#), LAND TRUST ALLIANCE RES. CTR. (Aug. 23, 2023).

¹⁷ Dania V. Francis et. al., *Black Land Loss: 1920–1997*, 112 AEA PAPERS AND PROC. 38 (2022).

¹⁸ *Id.*

¹⁹ *Introduction to CHALLENGES, SOLUTIONS, AND REFORM*, *supra* note 1.

Tax foreclosure sales occur when unpaid property taxes create a lien, allowing the local government to auction the land.²⁰ Unpaid property taxes on heirs' property are common, partly because heirs may not receive notice if they are not recorded as owners.²¹ Counties do not have an incentive to sell the properties for an amount higher than the tax debt because property owners are entitled to any proceeds exceeding the debt.²² In North Carolina, counties can set the minimum bid amount as low as the amount owed.²³ As a result, the properties are typically auctioned off at well below fair market value.²⁴ Thus, heirs lose their equity and ability to negotiate the sale of their land.²⁵

Local governments can similarly auction heirs' property to recover unpaid municipal fees, including utility bills, waste disposal charges, and stormwater management fees.²⁶ Government tax relief programs often require proof of title, which many heirs cannot provide, and heirs may lack the liquid assets to reclaim their property during auctions.²⁷ As a result, heirs frequently lose their land and generational wealth.²⁸

Partition actions occur when a co-tenant of a property asks a court to split a property into individual interests.²⁹ Disagreements among heirs about using, managing, or selling the land may make it difficult for any of them to benefit from their ownership, leading them to file for partition.³⁰ To address these challenges,

²⁰ Andrea Bopp Stark & Odette Williamson, NAT'L CONSUMER L. CTR., [*Property Tax Foreclosures on Heirs Property: The Devastating Consequences And Recommendations for Prevention*](#) 2–3 (2023).

²¹ *Id.* at 2.

²² *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023).

²³ N.C. GEN. STAT. § 105-376; *Duplin County v. Ezzell*, 223 N.C. 531 (1943).

²⁴ John Rao, NAT'L CONSUMER LAW CENTER, [THE OTHER FORECLOSURE CRISIS: PROPERTY TAX LIEN SALES](#) 28 (2012).

²⁵ Bopp Stark & Williamson, *supra* note 20, at 5.

²⁶ Rao *supra* note 24, at 4; N.C. GEN. STAT. § 160A-314(a)(1)–(2), (4), (f).

²⁷ Heather K. Way, CTR. OF EXCELLENCE FOR HOUS. AND CMTY. DEV. POL'Y RSCH, [THE INTERSECTION OF RESIDENTIAL HEIRS' PROPERTY AND PROPERTY TAX FORECLOSURE](#) 16 (Nov. 2024).

²⁸ *Id.* at 10.

²⁹ UNIFORM ACT, *supra* note 4, at § 2(6); N.C. GEN. STAT. § 46A-21.

³⁰ B. James Deaton and Jamie Baxter, *Towards a Better Understanding of the Experience of Heirs on Heirs' Property* in [HEIRS' PROPERTY AND LAND FRACTIONATION](#), *supra* note 6, at 44, 45-47;

courts may either physically divide the land into sub-parcels, or more commonly, order the entire property to be sold with profits split among the heirs.³¹

While partition actions can provide a necessary and practical solution when heirs disagree, partition also creates an opportunity for exploitation. Any co-tenant, no matter how small their interest, has the right to initiate a partition.³² Some real estate investors exploit this by “fishing” for heirs who are willing to sell their interest.³³ If an investor purchases a heir’s small share, they can file for partition and acquire the entire property at auction, often for below market value.³⁴ As investors accumulate and develop these properties, gentrification can occur, raising the nearby property taxes and increasing the likelihood that neighbors will also face land loss through tax sales.³⁵ Partition actions can displace individuals from family land and disrupt communities, often without meaningful recourse.³⁶

Land loss also threatens cultural identities. For example, the Gullah Geechee people are descendants of Africans enslaved in the coastal regions of North Carolina, South Carolina, Florida, and Georgia.³⁷ After slavery, the group settled in once-undesirable Lowcountry marsh areas, where they established deep cultural roots and a close-knit communities.³⁸ As a result of this history, the Gullah Geechee regard land as their “most valuable cultural asset.”³⁹

Maresh Tiwari et. al., *Partition Actions on Forestland Owned as Heir Property at the Determinants of Court Decisions*, 160 FOREST POL. AND ECONS. 2 (2025).

³¹ UNIFORM ACT *supra* note 4, at § 2(7); Phyllis Craig-Taylor, *Options for Countering the Faustian Bargain in the Judicial Partition of Heirs’ Property and the Enduring Phenomena of Investor-Speculator “Fishing,”* in [HEIRS’ PROPERTY AND LAND FRACTIONATION](#), *supra* note 6, at 83–84.

³² UNIFORM ACT, *supra* note 4, at Prefatory Note.

³³ Craig-Taylor, *supra* note 31.

³⁴ *Id.* at 83.

³⁵ Mike Maciag, *Gentrification in America Report*, GOVERNING (Jan. 29, 2015).

³⁶ *See, e.g.*, Anna Bradley-Smith, *Court Allows Partition Sale of Bed-Stuy Home in Family for 75 Years*, BROWNSTONER (Jul. 18, 2024).

³⁷ Jordan K. Boxley, *Who Are The Gullah Geechee?*, TELFAIR MUSEUMS (Jul. 26, 2023).

³⁸ *Id.*

³⁹ Emory Campbell, *Gullah Food & Culture*, GULLAH FARMERS COOP. ASS’N (last visited July 3, 2025); Faith Rivers, *The Public Trust Debate: Implications For Heirs’ Property Along The Gullah Coast*, 15 SOUTHEASTERN ENV’T. L.J. 147, 158–165 (2006).

Today, many historic Gullah Geechee areas, including Hilton Head and St. Helena islands, are now popular tourist destinations.⁴⁰ The Gullah Geechee own significant amounts of heirs' property, but they are experiencing rapid land loss due to investors and commercial development.⁴¹ As investors acquire ancestral lands and redevelop them into resorts and golf courses, rising property taxes contribute to increased tax sales, causing additional land loss.⁴² Meanwhile, the Gullah-Geechee are denied fair market value compensation for their dispossession—compensation that, even if received, could never truly replace what has been lost.⁴³

B. Heirs' Property and Land Use

Often, heirs' property is underutilized, and heirs do not reap all of the land's potential economic or natural benefits.⁴⁴ Families may lack consensus as to how to use the land, which can prevent certain economic opportunities like leasing the property for timber or mineral rights.⁴⁵ Insecure ownership also disincentivizes heirs from investing in their land because if the land is lost in a tax sale or partition action, they will lose the money and time spent on improvements.⁴⁶ Thus, heirs' properties commonly deteriorate, becoming unproductive "dead capital" and contributing to neighborhood blight.⁴⁷

⁴⁰ Justin Glawe, *Inside a Controversial Auction Of Gullah-Geechee Homes: This Land Needs To Be Protected*, THE GUARDIAN (Nov. 3, 2023).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Rob Doudrick, *Heirs' Property: Implications for Natural Resource Management*, in [HEIRS' PROPERTY AND LAND FRACTIONATION](#), *supra* note 6, at v.

⁴⁵ Janice Frew Dyer, *Heir Property: Legal And Cultural Dimensions Of Collective Landownership In Alabama's Black Belt* 9 (May 10, 2007) (Master's thesis) (on file with Auburn University).

⁴⁶ Tristeen Bownes & Robert Zabawa, *The Impact of Heirs' Property at the Community Level: The Case Study of the Prairie Farms Resettlement Community in Macon County, AL*, in [HEIRS' PROPERTY AND LAND FRACTIONATION](#), *supra* note 6, at 29, 31-32.

⁴⁷ Cassandra Johnson Gaither & Stanley J. Zarnoch, *Unearthing 'Dead Capital': Heirs' Property Prediction in Two U.S. Southern Counties*, 67 LAND USE POL'Y 367, 368 (2017); MUNICIPAL ASSOCIATION OF SOUTH CAROLINA, [How Cities Can Help Heirs' Property Owners](#).

Heirs are disproportionately low-income and may lack funds needed for upkeep or investments in the land.⁴⁸ Generally, creditors will not accept heirs' property as collateral, limiting the heirs' access to mortgages, business loans, or construction loans.⁴⁹ Access to credit is a key determinant for financial mobility because it enables individuals to pursue education, invest in their careers, and build generational wealth.⁵⁰ Wealth disparities in areas with significant amounts of heirs' property are exacerbated because heirs generally cannot leverage this land.⁵¹

Many heirs do not have ownership documents like deeds or tax records because ownership is unclear.⁵² Thus, heirs are often ineligible for government programs that require proof of ownership.⁵³ For example, the Weatherization Assistance Program for Low-Income Families provides funds for home improvements like insulation and air conditioning, but to be eligible an applicant's name must be recorded on the property tax card.⁵⁴

Similarly, government aid to repair damage from natural disasters often requires proof of ownership.⁵⁵ In 2024, the North Carolina Office of Recovery and Resiliency (NCORR) settled a lawsuit in which Legal Aid alleged that NCORR's proof of ownership requirements disproportionately denied aid to Black heirs' property owners affected by Hurricanes Matthew and Florence.⁵⁶

⁴⁸ Conner Bailey et al., *Heirs' Property and Persistent Poverty among African Americans in the Southeastern United States*, in [HEIRS' PROPERTY AND LAND FRACTIONATION](#), *supra* note 6, at 9, 11.

⁴⁹ Francine Miller, *Heirs' Property: Understanding the Legal Issues in North Carolina*, CTR. FOR AGRIC. & FOOD SYS. 2 (2023).

⁵⁰ FED. RESERVE BANK OF NEW YORK, [UNEQUAL ACCESS TO CREDIT: THE HIDDEN IMPACT OF CREDIT CONSTRAINTS](#) 2 (2019).

⁵¹ *Id.*

⁵² Kendall B. Bargeman, *The Heirs' Property Dilemma: How Stronger Federal Policies Can Help Narrow the Racial Wealth Gap*, 27 N.C. BANKING INST. 320, 320-322 (2023).

⁵³ *Id.*

⁵⁴ N.C. DEP'T OF ENV'T. QUALITY, [Find Your Service Provider](#) (last visited July 3, 2025); PIEDMONT TRIAD REGIONAL COUNCIL, [What is the Weatherization Program?](#) (last visited July 3, 2025).

⁵⁵ Sue Sturgis, [Recent Disasters Reveal Racial Discrimination in FEMA Aid Process](#), FACING SOUTH (Sept. 24, 2018).

⁵⁶ U.S. DEP'T OF HOUS. & URB. DEV., [TITLE VII CONCILIATION AGREEMENT/ TITLE VI & SECTION 109 VOLUNTARY COMPLIANCE AGREEMENT](#) (2024) (No. 04-23-4426-8).

NCORR voluntarily relaxed ownership requirements, allowing heirs to verify residency with alternate documents.⁵⁷ While NCORR created what has been called the “most flexible policy in the nation” following Matthew and Florence, the policy’s long-term impacts are uncertain because NCORR was created specifically to respond to those two hurricanes.⁵⁸

III. HEIRS’ PROPERTY AND FAMILY LAND OWNERSHIP

Addressing systemic issues related to heirs’ property requires a comprehensive approach that centers families’ goals. Some heirs’ property is created intentionally to meet the goal of family land co-ownership, which can reflect cultural values and provide a sense of identity, sanctuary, or connection to heritage.⁵⁹ Bailey and Dyer find that heirs’ property and land co-ownership “is supportive of certain cultural values and meets the needs of a sub-set of rural people in ways that other forms of property ownership cannot.”⁶⁰

Landowners who value family co-ownership can benefit from tools that prioritize stability, cultural preservation, and productive and sustainable land use. This includes policy reform, assistance from organizations, and land management instruments.

Policy reform is essential to make heirs’ property ownership more secure and equitable. The Uniform Partition of Heirs’ Property Act (UPHPA), enacted in 23 states but not North Carolina, is a model law that improves fairness in the partition process.⁶¹ It adds protections such as notice, an independent appraisal of the property, and a right of first refusal.⁶² While broad adoption of the UPHPA would be a significant improvement, a comprehensive approach to heirs’ property requires addressing other systemic challenges.

⁵⁷ *Id.*

⁵⁸ REBUILD NC, [About Us](#) (last visited July 3, 2025).

⁵⁹ Janice F. Dyer & Conner Bailey, *A Place to Call Home: Cultural Understandings of Heir Property Among Rural African Americans*, 73 *Rural Sociology* 317, 320 (2008).

⁶⁰ *Id.* at 317.

⁶¹ NAT’L CONFERENCE OF COMM’RS ON UNIFORM STATE LAWS, [UNIFORM PARTITION OF HEIRS’ PROPERTY ACT](#) (2010).

⁶² *Id.*

Formal tools and instruments can stabilize ownership and prevent partition. One such tool is limited liability companies, which can outline ownership shares, designate tax obligations, and create decision-making processes, creating more long-term stability than a tenancy in common.⁶³ Also, family land trusts can stabilize co-ownership by designating a trustee to determine how land is controlled and used for profit.⁶⁴

Several organizations offer support to families as they navigate systemic and legal challenges associated with heirs' property ownership. The Center for Heirs' Property Preservation in South Carolina offers title clearing, estate planning, family mediation, and forestry assistance services.⁶⁵ The Georgia Heirs Property Law Center similarly provides title and estate planning, representation in partition actions, forestry assistance services, and assistance following natural disasters.⁶⁶

The Heirs Property Project through N.C. State and N.C. A&T offers one-on-one support to current and inspiring farmers.⁶⁷ The Land Loss Prevention Project in Durham, North Carolina provides legal and technical assistance to prevent land loss and environmental degradation, including foreclosure defense, help with incorporation and tax-exempt status, and educational programs.⁶⁸ The Black Family Land Trust, Inc. in North Carolina, a conservation land trust dedicated to protecting the assets of historically underserved landowners through its comprehensive program, educates families about conservation tools including easements.⁶⁹ Each of these organizations also offers numerous other valuable initiatives.

⁶³ Caitlin Henderson, *Heirs Property in Georgia: Common Issues, Current State of the Law, and Further Solutions*, 55 GA. L. REV. 875, 899-900 (2021).

⁶⁴ Phyllis C. Taite, *Remediating Injustices Black Land Loss: Taking the Next Step to Protect Heirs' Property*, 10 BELMONT L. REV. 301, 320-323 (2023).

⁶⁵ *Id.*; [Homepage](#), CTR. FOR HEIRS' PROP. PRESERVATION (last visited July 15, 2025).

⁶⁶ [Services](#), GEORGIA HEIRS PROP. L. CTR. (last visited July 15, 2025).

⁶⁷ [Heirs Property Program](#), N.C. AGRIC. AND TECH. STATE UNIV. (last visited July 15, 2025).

⁶⁸ [Services](#), LAND LOSS PREVENTION PROJ. (last visited July 15, 2025).

⁶⁹ [Our Work](#), BLACK FAMILY LAND TRUST, INC. (last visited July 15, 2025).

The following section discusses how conservation easements can benefit families who want to own property together, a goal that often coexists with heirs' property ownership.

IV. CONSERVATION EASEMENTS

A conservation easement is a type of land servitude in which a land owner grants a land trust or government agency, known as the holder, the right to limit certain types of development.⁷⁰ Conservation easements can protect land for wildlife conservation, recreation, agriculture, forestry, and other purposes.⁷¹ Conservation easements usually run with the land, meaning they remain enforceable even if the land is inherited or sold.⁷² Holders own only the nonpossessory right to enforce the terms of the easement, although some terms provide that holders can monitor the property periodically to ensure compliance.⁷³ Landowners continue to own, use, and control their land in accordance with the easement terms.

Conservation easements can be a useful tool during the land-planning process, particularly when used alongside other instruments such as LLCs or family trusts. The easements can provide financial benefits for heirs' property owners who have cleared title, while also preserving family co-ownership and the cultural value of the land for future generations.⁷⁴ However, conservation easements do not solve underlying problems of fractional ownership and partition. All co-tenants in common must agree to place a conservation easement on heirs'

⁷⁰ Nancy A. McLaughlin, *Enforcing Conservation Easements: The Through Line*, 34 GEORGETOWN ENV'T L. REV. 167, 171 (2022); N.C. GEN. STAT. § 121-35.

⁷¹ N.C. GEN. STAT. § 121-35.

⁷² Paul Mitchell, *Protecting the Future Forever: Why Perpetual Conservation Easements Outperform Term Easements*, UNIV. OF GA. SCH. OF LAW LAND USE CLINIC DIGITAL COMMONS 10 (2006).

⁷³ *Id.*

⁷⁴ FARMLAND INFO. CTR., [GUIDE TO ACEP-ALE FOR HEIRS' PROPERTY LANDOWNERS](#) 1-2 (2024) [hereinafter ACEP GUIDE].

property, so heirs would still need to identify all co-owners and reach a consensus before placing the easement.⁷⁵

This article focuses on how conservation easements can benefit families who want to own property together by preserving culture and heritage, providing financial and tax benefits, deterring predatory investors to an extent, and incentivizing sustainable land management.

A. Preserving Culture and Heritage

Conservation easements can preserve cultural meaning tied to land, whether that meaning is rooted in the tradition of a single family or the broader heritage of a community. Land co-ownership can be part of a family's identity, a dynamic that often coexists with heirs' property but is threatened by insecure ownership.⁷⁶

The Gullah Geechee have a long-standing tradition of family land ownership and view land as a cultural asset.⁷⁷ This tradition is threatened by land loss and high rates of heirs' property ownership, as coastal ancestral lands are lost and redeveloped into tourist and commercial destinations.⁷⁸

Some Gullah Geechee families have benefited from conservation easements to preserve their traditions. For example, the Gullah Farmer's Cooperative (Cooperative), located on the Sea Islands of South Carolina, is covered by a 5000-acre easement which protects the use of the land for traditional agrarian practices.⁷⁹ The easement protects the land as a cultural and economic asset for families who live and farm on land within the Cooperative.⁸⁰ Several of

⁷⁵ *Southern Inv. Co. v. Postal Telegraph-Cable Co.*, 156 N.C. 259,260 (1911) ("Servitudes and easements upon lands cannot be granted by a tenant in common without the consent of his cotenants.").

⁷⁶ Janice F. Dyer & Conner Bailey, *A Place to Call Home: Cultural Understandings of Heir Property Among Rural African Americans*, 73 RURAL SOCIOLOGY 317, 320 (2008).

⁷⁷ Campbell, *supra* note 39.

⁷⁸ Glawe, *supra* note 40.

⁷⁹ [*Preserving the roots of the Lowcountry: A legacy of land and tradition*](#), OPEN LAND TRUST (last visited July 15, 2025).

⁸⁰ *Id.*

the Cooperative's members are also incorporated as LLCs, a more formal and stable arrangement than heirs' property.⁸¹ This demonstrates how conservation easements, especially when paired with other tools, can support family co-ownership and cultural preservation.

Other communities have similarly used conservation easements to protect culturally significant land. While not specific to heirs' property, the Saint Kateri Conservation Center protects land with cultural value to the Catholic faith.⁸² A 28-acre easement in Pūehuehu, Hawaii preserves sweet-potato farms, a key part of the local economy and culture.⁸³

Individual families can also have a connection to co-ownership and land, including through multigenerational businesses, cherished memories, or geographic features like family cemeteries, that they may want to protect from future development. The USDA's Agricultural Conservation Easement Program (ACEP) protects active farms and ranches to support sustainable agriculture and facilitates the participation of heirs' property owners in the program.⁸⁴

B. Providing Financial and Tax Benefits

Tax foreclosure sales are a primary cause of involuntary land loss, forcing heirs to lose equity when properties are auctioned off below their market value.⁸⁵ Conservation easements can reduce this risk because development restrictions decrease the land's assessed market value. As a result of the lower assessed value, property taxes decrease.⁸⁶

Landowners who anticipate selling their property in the future should be aware that an easement may reduce resale value, a potential consideration when negotiating easement terms with the holder. Conservation easements may be more

⁸¹ *Marshview Farm, LLC*, CERTIFIED SOUTH CAROLINA (last visited July 15, 2025).

⁸² *Catholic Land Trust*, SAINT KATERI CONSERVATION CTR. (last visited July 15, 2025).

⁸³ *Pūehuehu, Island Harvest, Kohala*, HAWAII LAND TRUST (last visited July 15, 2025).

⁸⁴ 16 U.S.C. § 3865; ACEP GUIDE, *supra* note 74.

⁸⁵ *Introduction to CHALLENGES, SOLUTIONS, AND REFORM*, *supra* note 1; Rao, *supra* note 24; Bopp Stark & Williamson, *supra* note 20.

⁸⁶ N.C. GEN. STAT. § 105-277.3.

appealing to families who intend to keep land in a co-ownership structure for future generations. However, depending on a family's ability to pay taxes, even those considering resale may benefit from an easement. Unlike when land is auctioned involuntarily, if land with a conservation easement is eventually sold, its owners retain their equity and bargaining power. For some, the lower taxes and reduced foreclosure risk may outweigh concerns about resale value.

Conservation easements also provide other tax benefits. Donated conservation easements may qualify for federal income tax deductions if they preserve land for recreation, education, historic sites, or natural habitats.⁸⁷ Easements can also reduce federal estate taxes by up to 40% of the restricted property value, offering an additional way for heirs to preserve intergenerational wealth.⁸⁸

While landowners may donate conservation easements to receive tax incentives, they may also receive compensation in exchange for placing the easement. For example, USDA's ACEP compensates landowners with the value of the easements on farmland and wetlands.⁸⁹ Heirs' property owners can participate in this program by providing documents to substantiate that they control the land, allowing families without LLCs, trusts, or traditional ownership documentation to receive compensation.⁹⁰

The compensation from USDA's ACEP could benefit heirs' property owners immensely since they could use these funds to maintain or invest in their land. If an heir wants to sell their interest, the other heirs could agree to use this compensation to buy his or her interest.⁹¹ Landowners may need to decide between upfront compensation or long-term tax incentives because certain tax benefits are contingent on at least a percentage of the easement being donated.

⁸⁷ Internal Revenue Code, 26 U.S.C. § 170(h) (2021).

⁸⁸ *Id.* § 2031(c) (2021).

⁸⁹ 16 U.S.C. § 3865.

⁹⁰ U.S. DEP'T OF AGRIC., [GUIDANCE FOR HEIRS' PROPERTY OPERATORS TO PARTICIPATE IN FARM SERVICE AGENCY \(FSA\) PROGRAMS](#) 1-2 (2022).

⁹¹ ACEP GUIDE, *supra* note 74.

C. Deterring Predatory Investors

Predatory or opportunistic real estate investors and developers can exploit the partition process by “fishing” for heirs who are willing to sell their interest, allowing them to file for partition and acquire the land through an auction.⁹² For example, heirs’ property complications involving Freeman beach in North Carolina led to partition sales and involuntary land loss. As a result, much of this historically Black-owned land was acquired by developers and used for commercial tourism.⁹³ Conservation easements may deter this sort of land speculation because they impose restrictions on development, making the land less attractive to investors seeking to commercially develop or build on the land.

The potential to deter predatory investors through the use of conservative easements is noteworthy, particularly for areas experiencing intense growth and development pressures. However, while conservative easements may dissuade investors interested in coastal tourism properties, investors interested in a property’s natural, recreational, or agricultural value may be undeterred. Thus, this benefit is not guaranteed, depending on the location of the property, goals of the investor, and terms of the easement.

Further, conservation easements will not necessarily restrict a co-tenant’s right to partition a property altogether. Some conservation easements restrict physical subdivision of land (i.e., dividing it into separate parcels among multiple owners), but this would still allow partition by sale. North Carolina case law suggests that cotenants can waive their right to partition land through contracts, but the exact applicability or enforceability of this in terms of conservation easements is unclear.⁹⁴

⁹² Craig-Taylor, *supra* note 31; Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community through Partition Sales of Tenancies in Common*, 95 NW. U. L. REV. 505, 505-512 (2001).

⁹³ Mikayla Mangle, *When the Legal System Was Designed to Work Against You, How Can It Ever Work For You? Rethinking Heirs’ Property Reform*, 17 CHARLESTON L. REV. 541, 542-543 (2023).

⁹⁴ *Chadwick v. Blades*, 210 N.C. 609, 612 (1936) (“Statutes declaring that joint tenants or tenants in common shall have a right to partition were never intended to interfere with contract between such tenants modifying or limiting this otherwise incidental right, or to render it incompetent for parties to make such contracts, either at the time of the creation of the tenancy or afterwards.”)

D. Incentivizing Sustainable Land Use

As used in this article, sustainable land use refers to land management that meets a landowner's current needs without compromising the ability of future generations to benefit from the land.⁹⁵ This involves using land economically while maintaining its long-term viability. For example, a landowner may start a timber business to meet economic needs. To do so sustainably, they need access to capital to plant trees and knowledge to maintain the land and harvest the trees at a rate that allows for regrowth and continued profit.

Heirs' properties are often not used sustainably, instead being underutilized and undermaintained, partly because heirs are disproportionately low-income and face barriers to accessing loans, aid, grants, and technical assistance.⁹⁶ Conservation easements can incentivize sustainable land use by opening the door to programs designed to support land protection, including grants, loans, or cost-share assistance programs related to conservation and restoration.

Relevant programs include the USDA's ACEP for maintaining soil health and increasing crop yields,⁹⁷ Wetlands Reserve component of the ACEP for financing flood control and water quality technology, and Healthy Forests Reserve Program for reforestation and controlling invasive species.⁹⁸ While the ACEP has issued guidance to help heirs' property owners participate, it could be useful for other conservation programs to provide more clarity and outreach to help families who own heirs' property navigate participation.⁹⁹ In addition to conservation programs, the easement holder may also provide ongoing support to

⁹⁵ WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, [OUR COMMON FUTURE](#) (1987).

⁹⁶ Gaither & Zarnoch, *supra* note 12; Miller *supra* note 49.

⁹⁷ 16 U.S.C. § 3865b; 7 C.F.R. § 1467.4; 7 C.F.R. § 625.4; N.C. GEN. STAT. § 139-7.1; [Federal & State Conservation Assistance Programs](#), LAND CONSERVATION ASSISTANCE NETWORK (last visited July 15, 2025).

⁹⁸ N.C. GEN. STAT. § 139-7.1; LAND CONSERVATION ASSISTANCE NETWORK, *supra* note 97.

⁹⁹ 16 U.S.C. § 3865; ACEP GUIDE *supra* note 74.

the property owners to ensure land is managed in accordance with the easement terms.¹⁰⁰

Even with these programs, heirs' property owners need more specific support for sustainable land use. More programs aimed at sustainable use of heirs' property, such as the forestry services provided by the Center for Heirs' Property Preservation and Georgia Heirs Property Law Center, could make a crucial difference for families.¹⁰¹

Even as conservation programs and non-profit organizations make efforts to include heirs' property owners, legal uncertainty discourages heirs from engaging in sustainable land use. Without clear ownership rights, heirs lack assurance that investing in and improving their land will benefit them in the long term. Research demonstrates that insecure land ownership leads to disinvestment and land degradation, while secure ownership promotes sustainable and productive land use.¹⁰² Deterring predatory investors and reducing property taxes may offer some additional stability, but this has limits. Encouraging sustainable land use requires access to resources and a legal system that motivates people to use them, so policy reform and access to tools that secure ownership in the long term are also crucial to incentivize sustainable land use and prevent involuntary land loss.

V. CONCLUSION

In sum, families who own heirs' property face challenges because their ownership is unstable, making it difficult for them to benefit from their land ownership. Some families who own heirs' property have a goal of family land co-ownership, and conservation easements are one tool that can benefit families with this goal. Conservation easements can preserve culture and heritage, provide financial and tax benefits, deter some predatory investors, and incentivize

¹⁰⁰ [Working with Landowners](#), LAND TRUST ALLIANCE RESOURCE CENTER (last visited July 15, 2025).

¹⁰¹ [Our Work](#), CTR. FOR HEIRS' PROP. PRESERVATION (last visited July 15, 2025).

¹⁰² UCHENDU EUGENE CHIGBU, ET AL., UNITED NATIONS CONVENTION TO COMBAT DESERTIFICATION, GLOBAL LAND OUTLOOK WORKING PAPER, [STRENGTHENING TENURE AND RESOURCE RIGHTS FOR LAND RESTORATION](#) (2022).

sustainable land use. Families can consider conservation easements as a tool during the land planning and decision-making process.