

Conservation Easement Committee

August 20, 2013
Greensboro, NC

Attendees: Vicky Porter, Craig Frazier, Jonathan Lanier, Rusty Painter, Dewitt Hardee, Natalie Woolard, Pat Harris, Caitlin Burke, Kim Livingston, Kirstin Frazier, Jack Beuttell, Edgar Miller

Vicky Porter and Craig Frazier explained the purpose of the committee which is to review issues related to easement acquisitions, requests for easement condition revisions, stewardship processes and compliance policies for when easement conditions are not followed.

Jonathan Lanier explained the relevant authorities of the Council of State, the Department of Agriculture and Consumer Services, the Division of Soil and Water Conservation and the Soil and Water Conservation Commission. See Attached Summary.

Committee members and guests discussed and drafted language for the following policies. The specific language for each policy is attached.

- Policy for Conservation Easement Modification
- Policy for Conservation Easement Termination
- Policy for Noncompliance of Conservation Easement

Natalie will schedule conference call to review policy language again with committee. At that time the committee will decide when to recommend to SWCC.

Relevant Authority of Council of State

§ 146-22. All acquisitions to be made by Department of Administration.

- (a) Every acquisition of land on behalf of the State or any State agency, whether by purchase, condemnation, lease, or rental, shall be made by the Department of Administration and approved by the Governor and Council of State.

§ 146-27. The role of the Department of Administration in sales, leases, and rentals.

- (a) General. - Every sale, lease, rental, or gift of land owned by the State or by any State agency shall be made by the Department of Administration and approved by the Governor and Council of State.

§ 146-32. Exemptions as to leases, etc.

The Governor, acting with the approval of the Council of State, may adopt rules and regulations

- (1) Exempting from any or all of the requirements of this Subchapter such classes of lease, rental, easement, and right-of-way transactions as he deems advisable;

§ 143-341. Powers and duties of Department.

- (4) Real Property Control:

- d. To acquire, whether by purchase, exercise of the power of eminent domain, lease, or rental, all land, buildings, and space in buildings for all State agencies, subject to the approval of the Governor and Council of State in each instance. The Governor, acting with the approval of the Council of State, may adopt rules (i) exempting from any or all of the requirements of this paragraph such classes of lease, rental, easement, and right-of-way transactions as he deems advisable; and (ii) authorizing any State agency to enter into and/or approve the classes of transactions thus exempted from the requirements of this paragraph...

Relevant Authority of Department of Agriculture (Division of Soil and Water Conservation)

§ 113A-235. Conservation easements.

- (a) Acquisition and Protection of Conservation Easements. - Ecological systems and appropriate public use of these systems may be protected through conservation easements, including conservation agreements under Article 4 of Chapter 121 of the General Statutes, the Conservation and Historic Preservation Agreements Act, and conservation easements under the Conservation Reserve Enhancement Program...

§ 121-37. Acquisition and approval of conservation and preservation agreements.

Subject to the conditions stated in this Article, any holder may, in any manner, acquire, receive or become a party of a conservation agreement or a preservation agreement.

Relevant Authority of Soil and Water Conservation Commission

§ 139-4. Powers and duties of Soil and Water Conservation Commission generally.

- (d) In addition to the duties and powers hereinafter conferred upon the Soil and Water Conservation Commission, it shall have the following duties and powers:
- (1) To offer such assistance as may be appropriate to the supervisors of soil and water conservation districts, organized as provided hereinafter, in the carrying out of any of their powers and programs.
 - (3) To coordinate the programs of the several soil and water conservation districts organized hereunder so far as this may be done by advice and consultation.
 - (4) To secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this State, in the work of such districts.

02 NCAC 59F .0101 OBJECTIVES

- (a) The North Carolina Conservation Reserve Enhancement Program (CREP) is a state/federal/local partnership that combines existing federal Conservation Reserve Program (CRP) funding and state funding from various sources, including the Agriculture Cost Share Program (ACSP), to take environmentally sensitive land out of crop production. For purposes of this Rule the generic term "CREP" references either the federal portion or the combined federal and state portions of the program. The combined federal and state portion of CREP is referred to as NC-CREP. Under CREP, landowners may voluntarily enroll eligible land in 10-year, 15-year, 30-year or permanent agreements or contracts. The Commission operates the state portion of NC CREP program as the lead agency for the State of North Carolina (State), and may from time to time delegate activities to the Division.

02 NCAC 59F .0104 APPROVING STATE AGREEMENTS

- (a) Final approval for all NC-CREP agreements shall be the responsibility of the Division. Thirty-year and permanent agreements require recording of a conservation easement or conservation lease in the appropriate county registry. The intent is to provide that the NC-CREP Enrollment Area shall be protected for the life of the signed agreement. The Division shall provide a mechanism to acquire and record easements and leases for NC-CREP. The Division shall provide a survey where needed to develop legal description of the easement area. Conservation easements and leases entered into shall be consistent with the requirements of the Department of Administration and with 01 NCAC 06B .0210

Policy for Conservation Easement Modification

The purpose of this policy is to provide a consistent response to conservation easement modification. A modification is defined as changes to the conditions of a fully executed conservation easement. No modification will be considered that reduces the conservation values of the land, add an allowable use that was not included in the original easement language or jeopardizes the obligations of the Division, other partners, or to the public. All modification requests must be approved by the Commission unless otherwise specified and in accordance with Chapter 146 of the NC General Statutes.

- Conservation easement modifications will only be considered if the conservation value of the property will be strengthened. Grantor may be subject to payment of associated costs.
- Technical corrections are allowed with Division approval. Dependent upon nature of error, recordation of correction may be needed.
- Extending the duration of the easement is allowed with Division approval and through appropriate legal mechanisms.
- Management Plans –
 - Forestry Management – Allowed with Division approval and recommendation by NC Forest Service *or registered forester*. This will include but is not limited to thinning schedule, species to replant, disease or natural disaster concerns. These modifications should be made through a revised forestry management plan and not intended to require modification of specific easement language. The revised forestry management plan must be submitted to the Division for approval prior to implementation of the plan.
 - Conservation Plan Changes – Allowed with Division approval and recommendation by local Soil and Water Conservation District or NRCS. This may include changes in vegetation or tree species which still meets required program policies. These modifications should be made through a revised conservation plan and not intended to require modification of specific easement language. The revised conservation plan must be submitted to the Division for approval prior to implementation of plan.

Policy for Conservation Easement Termination

Termination of interests in real property can only be achieved in accordance with the authorities granted within the provisions of Chapter 146 of the NC General Statutes and any other statutory requirements.

Policy for Noncompliance of Conservation Easement

The purpose of this policy is to provide a consistent response to conservation easement compliance issues. Once a compliance issue is confirmed, division staff must give reasonable notice to provide the landowner an opportunity to voluntarily correct the issue. All efforts should be made by the landowner to address the issue within 30 days where practicable. Depending upon the severity of noncompliance, the initial notification may be verbally or in writing by Division staff in coordination with the District.

However, if the noncompliance concern is not addressed appropriately within the agreed upon response deadline then division staff must follow required procedures as specified in 02 NCAC 59F .0106. At anytime deemed necessary by Division injunctive relief can be sought by court order.

It is the intent of the Commission to uphold the position that the noncompliance area must be returned to the condition that met the program objectives or guidelines when easement was acquired and not release any easement in response to a compliance issue.

In the event that the landowner disputes the practicality of reestablishing the noncompliance area to previous condition then mitigation will be considered once the landowner submits in writing to the Division the following information:

- name, address, and phone number of property owner
- nature of disturbance/non compliance activity
- location of activity
- map of sufficient detail to accurately delineate the boundaries of the land impacted by the activity, the location and dimensions of the activity, and the location of riparian buffers.
- explanation as to why the non compliance area cannot be reestablished to the previous condition, include cost analysis if applicable.
- proposal for mitigation must include a perpetual conservation easement with a minimum of 3:1 acreage or linear stream footage dependent upon impact and program objectives (CREP, Swine Buyout). The easement being donated must create a riparian buffer with an average width of no more than 300' and that is contiguous to surface water.

Landowner incurs all costs associated with the mitigation including but not limited to legal, survey, transaction and increased stewardship costs.

The Division must present the request to the Commission. The Commission will consider the request and provide a recommendation to the Commissioner of Agriculture.