

**FREQUENTLY ASKED LEGAL  
QUESTIONS REGARDING CREP  
CONSERVATION EASEMENTS**

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# What is a Conservation Easement?

An agreement between two parties regarding land whereby the owner of the land allows the other party to use the land for certain purposes or the owner of the land agrees to not use their own land for purposes to which the owner otherwise has a legal right.

**The Easement says  
“Deed of Conservation Easement”.**

**Am I deeding my property away?**

No, the landowner is agreeing to give up certain rights, or interests, that they have in the land.

**Once the conservation easement is on my land, can I later sell the land?**

Yes.

**I have a deed of Trust on my property. Can I still enroll in the CREP State Incentive program?**

Generally, yes. However, the landowner may be required to secure a subordination agreement from the bank that holds the Deed of Trust on the land.

# **I am married. Does my spouse have to sign the Conservation Easement?**

Yes. NC law gives spouses of persons owning real property what is known as statutory “marital interest”.

This is the case even if the property was not deeded to the spouse.

**I am the owner of the property. I have given the farm operator FSA Power of Attorney to execute FSA documents and contracts. Can the farm operator execute the Conservation Easement on my behalf using the FSA Power of Attorney?**

No. The FSA Power of Attorney can only be used to execute FSA documents.

**I own the property with my 5 brothers and sisters. I am the only one still living in North Carolina, and I handle all operations regarding this property. The rest of my siblings live in other states. Can I participate in CREP-State Incentive without bothering them?**

No. All legal owners of record must be willing to participate in the program.

# **Do my brothers and sisters have to sign all the documents?**

Yes if they are owners of record, unless you have a valid power of attorney authorizing you to sign on your sibling's behalf.

**I have a life estate in the property. Upon my death the property is to go to my two children (they are the “remaindermen” of the life estate). Do my children have to sign the easement?**

Yes. All owners of the property must sign the conservation easement, regardless of the size or duration of their ownership interest.

# Estate Issues

If the property is currently in an estate settlement procedure, CREP generally waits until the estate is closed before closing the conservation easement with the new owners of the property.

## **Checks made payable to....**

CREP generally makes checks payable to the owners of the property in the proportion of each respective owner's interest in the land.

# **Tax Questions**

For answers to these and any other tax related questions, please consult your accountant or tax advisor.

# **CREP Policies**

New Conservation Easement policies adopted  
October 1, 2013 by SWCC

Policy documents can be found at

[www.ncagr.gov/SWC/commission/policies.html](http://www.ncagr.gov/SWC/commission/policies.html)

All conservation easement and management plan modifications should start with local soil and water conservation district involvement.

### **Policy for Conservation Easement Modification**

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

- Modifications of the conservation easement document will only be considered if the conservation value of the property will be strengthened or maintained as determined by the Division of Soil & Water Conservation.
- Grantor (landowner) may be responsible for associated costs including costs incurred by the Division of Soil & Water Conservation.
- Technical corrections are allowed with Division approval.
- Any modification to a conservation easement must reference the original conservation easement and be recorded with the Register of Deeds.
- Extending the duration of the easement is allowed with Division approval and through appropriate legal mechanisms.

### **Policy for Management Plan Changes on Conservation Easement Properties**

Over time, management needs and goals of a conserved property may change. Management plans (if addressed in the conservation easement) must be flexible enough to address necessary changes. Management plan changes are allowed with Division approval and are not intended to require modification of the conservation easement language. Specifically, the following conditions apply:

- Conservation Plan Revisions can be made with recommendation by the local Soil and Water Conservation District or NRCS. Revisions may include changes in vegetation or tree species, provided they still meet required program policies. Modifications should be documented through a revised conservation plan, which must be submitted to the Division for approval prior to being implemented.

### **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**

*(Revised November 20, 2013)*

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 verbal or in writing by Division staff in coordination with the District.

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 the Division, injunctive relief can be sought by court order.

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

## 02 NCAC 59F.0106 DISPUTE RESOLUTION

(a) If noncompliance with any CREP agreement is determined, the landowner must return the enrolled area to the condition that meets the guidelines of the CREP upon receiving written notification to do so. The notice, from the appropriate CREP agency, will contain:

- (1) a detailed description of the enrolled area;
- (2) a description of the area in noncompliance;
- (3) recommended measures for repair of the practice; and
- (4) a time frame for repair.

Any expense incurred due to the noncompliance of a practice will be the responsibility of the landowner. Landowners are not responsible for repayment of cost-share due to a failure of a practice through no fault of their own.

(b) From the date of the notice of noncompliance, the landowner will be given 30 days to reply in writing to the Division with a plan for repairing the easement area. The Division will work with the landowner to ensure that the plan of repair meets the CREP objectives. Once a plan is approved in writing by the Division, the landowner has 90 days from the date of said approval to complete restoration of the easement area. For vegetative practices, applicants are given one calendar year to re-establish the vegetation. An extension may be granted by the Division if it is determined that compliance cannot be met due to circumstances beyond the landowner's control.

(c) In the event that an easement has been found to be noncompliant and the landowner does not agree to repair or re-implement the cost shared practice, the landowner and the Division may jointly request the Commission to mediate the case as set forth in the NC-CREP contract between the parties. To invoke this method, both parties must stipulate that said mediation is binding.

# **CREP Monitoring**

Monitoring is currently done by DSWC CREP staff.

All CREP properties are placed within a tier to determine the frequency of monitoring. All properties are seen at least once every three years.

If needed, monitoring records can be obtained from CREP staff. Records are kept on the DENR Stewardship Database.