

Conservation Easement Committee

September 13, 2013 – Conference Call

Attendees: Vicky Porter, Craig Frazier, Natalie Woolard, Pat Harris, Caitlin Burke, Jonathan Lanier, Kim Livingston, Tony Davis, Rusty Painter, Dwight Batts, David Williams, Dewitt Hardee

- Finalize Policy Language - See attached
 - Conservation Easement Modification
 - Management Plan Changes on Conservation Easement Properties
 - Conservation Easement Termination
 - Noncompliance of Conservation Easement
- Recommendation for Commission Meeting (Oct/Nov) –Request for October unless Commission Agenda is too full.
- Set Next Meeting Date – Send Doodle Poll for late Oct or early Nov. Stay away from State Fair and Fall Meetings
- Topics to Consider for next meeting
 - Stewardship
 - Cost Share Noncompliance Policy

Follow –up actions:

- Division staff will work on detail procedures for how modifications requests are to be made. We will bring this information back to the group for review. The information should then be distributed to districts as well as available on the Division website. (Kim, Natalie, CREP staff)
- Kim is working with cost share staff to update cost share compliance letter to reference easements when applicable.
- Natalie will make sure Julie is available for the cost share noncompliance policy discussion at our next meeting.
- Caitlyn will provide a brief report of CTNC's participation at the National Land Conservation Conference in New Orleans Sept 17-19.

Conservation Easement Policies

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:

- Forestry Management Plan revisions can be made with recommendation by NC Forest Service or registered forester. Changes may include, but are not limited to, thinning schedule, species to replant, disease or natural disaster concerns. Modifications should be documented through a revised forestry management plan, which must be submitted to the Division for approval prior to being implemented.
- 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

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.

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 uphold the position that the noncompliance area must 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.

In the event that the landowner disputes the practicality of reestablishing the noncompliance area to its 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/noncompliance activity
- Location of activity
- Map with 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 noncompliance area cannot be reestablished to the previous condition, including cost analysis if applicable.
- Proposal for mitigation, which must include a perpetual conservation easement with a minimum of 3:1 acreage or linear stream footage depending upon impact and program objectives (CREP, Swine Buyout). The easement being donated for mitigation must create a riparian buffer with an average width of no more than 300' and that is contiguous to surface water.

The landowner will incur all costs associated with mitigation, including but not limited to legal, survey, transaction and increased stewardship costs.

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