

Conservation Easements and Other Land Preservation Techniques
April 4, May 16, and June 6, 2003
Full Agenda

Full Agenda:

Time: 7:30 AM
Presentation/Activity: Registration
Date(s): April 4, May 16, and June 6, 2003
Presenter: N/A
Organization/Agency: N/A
Elapsed Time: 40 min.
Presentation Notes: N/A

Time: 8:10 AM
Presentation/Activity: "Trends in Land Preservation and the Role of Private Land Trusts" & "Monitoring, Stewardship, and Funding of Conservation Easements"
Date(s): April 4 and May 16, 2003
Presenter: Janice Allen, Director of Land Protection
Organization/Agency: North Carolina Coastal Land Trust
Date(s): April 4, 2003
Presenter: Lee Leidy, JD, Attorney-At-Law
Organization/Agency: North Carolina Coastal Land Trust
Date(s): May 16, 2003
Presenter: Jessica Blake, Stewardship Biologist
Organization/Agency: North Carolina Coastal Land Trust
Date(s): June 6, 2003
Presenter: Gerry Cohn, Director
Organization/Agency: American Farmland Trust, Southeast Office
Elapsed Time: 60 min.
Presentation Notes: A brief summary follows;

An introduction to the work and methods of North Carolina's and America's private, not-for-profit land conservation organizations, known as "land trusts"; a review of land trusts partnerships with private landowners and their use of conservation easements to protect natural resources on private properties; the use of conservation easements on different types of lands--from nature preserves to working farms and forests; the motivations and interests of landowners who enter into conservation easement management agreements. More info: <<http://www.lta.org/regionallta/southeast.htm>>, <<http://www.ctnc.org/home.asp>>, and <<http://www.farmland.org/>>.

This same presentation will also attempt to dispel some of the myths associated with the stewardship of conservation easements and address the important points of baseline documentation, monitoring, easement violations, and financing of the easement holder's stewardship responsibilities. Since a conservation easement divides real property interests and conveys some of these interests to another entity, the overriding theme of this presentation is that this legal instrument establishes a perpetual partnership in conservation between the easement grantor and grantee with stewardship of the land as their mutual goal.

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Time: 9:10 AM
Presentation/Activity: "Legal Steps in Creating a Conservation Easement"
Date(s): April 4 and May 16, 2003
Presenter: Camilla Herlevich, JD, Executive Director/Attorney-At-Law
Organization/Agency: North Carolina Coastal Land Trust
Date(s): June 6, 2003
Presenter: Ted Feitshans, JD, Extension Specialist/Lecturer
Organization/Agency: NC State Department of Agricultural and Resource Economics
Elapsed Time: 60 min.
Presentation Notes: A brief summary follows;

- What is a conservation easement and what are its uses?;
- Review basic legal terms and definitions associated with conservation easements;
- Discuss the essential elements or legal requirements for conveying any interest in real property
- Discuss the non-essential elements required for easement holder to enforce the easement
- Review steps in creating a conservation easement including finding a land trust, establishing baseline documentation, appraisal of easement;
- Review various model easements that may be used and the different provisions contained in each; and
- Rights and Responsibilities of Landowners and Conservation Agencies
 - Law applicable to formation of conservation easements.
 - Formation checklists for landowners and agencies.
 - Summary of federal and state tax benefits.
 - Promoting good relationships between landowners and agencies.
 - Fostering adequate income opportunities for landowners.
 - Developing a program for the eventual transfer of rights.

Time: 10:10 AM
Presentation/Activity: 10 Minute Break
Date(s): April 4, May 16, and June 6, 2003
Presenter: N/A
Organization/Agency: N/A
Elapsed Time: 10 min.
Presentation Notes: N/A

Time: 10:20 AM
Presentation/Activity: "Appraisal of Conservation Easements"
Date(s): April 4 and May 16, 2003
Presenter: Charles Moody, Appraiser/Member of Appraisal Institute
Organization/Agency: Realty Services of Eastern Carolina, Inc.
Date(s): June 6, 2003
Presenter: Don Johnson, Appraiser/Member of Appraisal Institute
Organization/Agency: Johnson and Knight Appraisal Services
Elapsed Time: 90 min.
Presentation Notes: A brief summary follows;

Key points to be covered in this presentation are as follows:

- Requirement for the appraiser to comply with USPAP
- Need for the appraiser to have experience with valuation of the property type
- The importance of establishing a clearly defined appraisal premise
- The impact of the Conservation Easement on highest and best use

The presentation will close with suggestions and guidelines to assist the participants in establishing a satisfactory working relationship between the appraiser and the client.

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Time: 11:50 AM
Presentation/Activity: Lunch w/ Speaker - "Landowner's Perspectives on Conservation Easements"
Date(s): April 4, May 16, and June 6, 2003
Presenter: Landowners To Be Announced
Organization/Agency: Landowners To Be Announced
Elapsed Time: 55 min. (actual presentation time 30 min.)
Presentation Notes: A brief summary follows;

- Will discuss feelings and concerns about conservation easements; why they put an easement on their land, what their concerns about an easement are now and what they were prior to the easement;
- Discuss what other landowners should consider before placing an easement on their land; and
- Discuss what the benefits are of an easement to them personally

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Time: 12:45 PM
Presentation/Activity: "Conservation Easement Provisions and Timber Management" & "North Carolina Forest Legacy and Forest Stewardship Programs"
Date(s): April 4 and June 6, 2003
Presenter: Rick Hamilton, Extension Specialist/Extension Department Leader
Organization/Agency: NCCES Extension Forestry; NCSU Department of Forestry
Date(s): May 16, 2003
Presenter: Dr. Mark Megalos, Forest Stewardship Coordinator
Organization/Agency: NC Division of Forest Resources
Elapsed Time: 60 min.
Presentation Notes: A brief summary follows;

◇ Conservation Easement Provisions & Timber Management

- What are "working forest easements" and why use them?
 - landowner objectives
 - retain economic use
- Forest regeneration strategies
 - intensive even-aged
 - even-aged single species
 - even-aged mixed species
 - uneven-aged
- Management Tools
 - clearcutting
 - selective harvest and others
- What do the easement provisions need to say/allow for?
 - must recognize forests are dynamic and to accomplish an objective one or more regeneration systems may be necessary
 - favor a "can do" easement with conditions; avoid simply outright restricting activities such as clearcutting and roadbuilding
- Intermediate Stand Management and Rules
 - thinning to regulate trees per acre
 - timber stand improvement (TSI)
 - crop tree management
 - +forest stewardship on a tree by tree basis
 - +provides for wildlife, aesthetics, water quality protection, etc.

◇ North Carolina Forest Legacy, Forest Land Enhancement, and Forest Stewardship Programs

- NC Forest Development Program
 - Establishment \$\$\$
- Forest Land Enhancement Program
 - 2002 Farm Bill
 - Promotes Sustainable Forestry
 - \$\$\$ for Improvement, Burning, Wildlife, Erosion Control Education and Technical Assistance
- Forest Legacy Legislation and Intent
 - use conservation easements to protect areas threatened by conversion
- What areas can be protected under Forest Legacy
 - working forests
 - important cultural, wildlife, recreational resources and other areas with ecological values
- Program Details
 - federal and state partnership
 - federal government provides technical and financial assistance
 - monitoring done by State of NC
- Future Needs
 - funding
 - state based program
 - expand protected acreage

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Time: 1:45 PM
Presentation/Activity: 10 Minute Break
Date(s): April 4, May 16, and June 6, 2003
Presenter: N/A
Organization/Agency: N/A
Elapsed Time: 10 min.
Presentation Notes: N/A

Time: 1:55 PM
Presentation/Activity: "Federal and State Programs That Support Land Conservation/Preservation"
Date(s): April 4, May 16, and June 6, 2003
Presenter: Ted Feitshans, JD, Extension Specialist/Lecturer
Organization/Agency: NC State Department of Agricultural and Resource Economics
Elapsed Time: 30 min.
Presentation Notes: A brief summary follows;

- *New* Overview of 2002 Farm Bill Changes to Conservation Programs
- Conservation Reserve Enhancement Program (CREP)
 - how does the program work?
 - who can enroll?
 - practices and cost share options
- Conservation easements for farms in floodplains
- Conservation Reserve Program
- Debt Cancellation Conservation Contract Program
- Environmental Quality Incentives Program (EQIP)
- Forestland Enhancement Program
- Wildlife Habitat Incentives Program (WHIP)
- Clean Water Act - Section 319 (Nonpoint Source)
- Technical Assistance to Assist in Conservation: Agencies, Universities, Federal, State
- NC Incentive Programs
 - Million Acre Plan
 - Many others
- North Carolina Clean Water Management Trust Fund

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Time: 2:25 PM
Presentation/Activity: "Estate Planning and the North Carolina Conservation Tax Credit Program"
Date(s): April 4, May 16, and June 6, 2003
Presenter: Guido van der Hoeven, Extension Specialist
Organization/Agency: NC State Department of Agricultural and Resource Economics
Elapsed Time: 90 min.
Presentation Notes: A brief summary follows;

◇ Estate Planning

- What is a "bargain sale"?
- Tax Advantages and Disadvantages of Conservation Easements
- Federal Tax Aspects of Conservation Easement Donations
 - Income Tax: Fee Simple, Partial Interest, Capital Gain Property, Ordinary Income Property
- What is a "qualified conservation contribution"?
 - Perpetuity
 - Conservation Purposes
- Internal Revenue Code Section 170 (h)
- Estate Tax Aspects of Conservation Easement Donations
- Internal Revenue Code Sections 2055(a) and 2055 (f): charitable deduction
- Value Exclusion and Post-Mortem Easement Donations
- Internal Revenue Code Section 2031(c)
- Gift tax reduction in value
- Estate tax reduction in value

◇ North Carolina Conservation Tax Credit Program

- What is the North Carolina Conservation Tax Credit (NCCTC) and the amount that may be claimed?
 - N.C.G.S. 105-130.34 Credit for certain real property donations (corporations)
 - N.C.G.S. 105-151.12 Credit for certain real property donations (individuals)
- Conservation Benefits or Value
 - donations must result in one or more public benefits (purposes)
 - donations must be in perpetuity
- How interest may be donated
 - fee simple interests
 - conservation easement; less than fee simple
 - interests conveyed for no compensation or through a bargain sale
- For NC tax purposes real property donation counts as a charitable contribution and can be claimed as a NCCTC
- Types of land and areas that qualify for ctc through donation of interests for conservation purposes
- Motivation of Conservation Donors
 - Quickly summarize the findings of research on the motivation of conservation donors. This helps attendees to better understand their clients and ascertain which ones may be interested in the donation of interests in real property that might yield a N.C. Conservation Tax Credit and other tax benefits.
- Fundamentals of the North Carolina Conservation Tax Credit
 - Present key requirements of a successful application for Conservation Tax Credit Certification from the N.C. Department of Environment and Natural Resources. This informs attendees about the conditions that must be met if donation of interests in real property is to qualify for a NCCTC. With this information about required conservation benefits, qualified recipients, special conditions, and common pitfalls, attendees will be more comfortable in advising their clients about the NCCTC opportunity.
- NCCTC Program Activity
 - Quickly summarize the results of seventeen years of NCCTC Program activity. This improves attendees' understanding of the scale and types of donations that are receiving NCCTCs, as well as program trends and future initiatives.
- Question and Answer
 - Questions about this specific presentation will be answered. More info: <<http://ncctc.enr.state.nc.us/>>

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Time: 3:55 PM
Presentation/Activity: "Conservation Easements and Ethics"
Date(s): April 4 and May 16, 2003
Presenter: Ted Feitshans, JD, Extension Specialist/Lecturer
Organization/Agency: NC State Department of Agricultural and Resource Economics
Date(s): June 6, 2003
Presenter: Jesse Richardson, JD, Assistant Professor
Organization/Agency: Virginia Tech Dept. of Urban Affairs and Planning
Elapsed Time: 60 min.
Presentation Notes: A brief summary follows;

- Introduction
 - Many financial incentives exist to provide motives for dishonesty
 - What is "ethics"?
 - What is "fraud"?
- Attorneys
 - American Bar Association Model Code of Professional Responsibility
 - Aspirational Ethical Considerations
 - Scenario's
 - +introduction
 - +dishonesty, fraud, deceit
 - +aiding a non-lawyer in the unauthorized practice of law
 - +refusing employment when the interests of the lawyer may impair his/her professional judgment
 - +avoiding influence by others than the client
 - +representing a client zealously
 - +representing a land trust
- Appraisers
 - Uniform Standards of Professional Appraisal Practice (USPA)
 - Scenario's
 - +introduction
 - +an appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions or with a contingent fee
 - +duty of impartiality, objectivity, competence, and independence
- Land Trusts
 - Introduction
 - Maryland Environmental Trust v. Gaynor
 - Signing the Form 8283
- Landowners
 - Scenarios
 - +introduction
 - +unbuildable property
 - +interconnected property
- Conclusion
 - Many incentives to induce donation of easements may lead to abuse
 - Small but increasing number of abuses
 - Land Trust community must be vigilant
 - Land Trust community and others must maintain ethical standards
 - Can prevent costly and lengthy litigation"

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Time: 4:55 PM
Presentation/Activity: Workshop Adjourns
Date(s): April 4, May 16, and June 6, 2003
Presenter: N/A
Organization/Agency: N/A
Elapsed Time: N/A
Presentation Notes: N/A