

[248] March 20, 1996

**Mr. Bill Flourney**

Legislative & Intergovernmental Affairs  
N.C. Department of Environment, Health, and Natural Resources  
Post Office Box 27687  
Raleigh, North Carolina 27611-7687

**Re:** Advisory Opinion: Availability of North Carolina Conservation Tax Credits Under G.S. §§ 105-130.34 & 105-151.12 for Donations of Mandatory Riparian Buffer Lands

Dear Mr. Flourney:

You have asked this Office about the applicability of the North Carolina "conservation tax credits", available under N.C.G.S. §§ 105-130.34 and 105-151.12, to donations of conservation easements for riparian lands required by proposed state law to be maintained as stream buffers in order to protect stream water quality. Specifically, you have raised two questions: (1) would a landowner be eligible for a state conservation tax credit for donation of a conservation easement in a parcel of land required by law to be maintained in its natural state as a stream buffer area; and (2) if so, to what extent would the buffer requirement affect the value of the tax credit available to the donor. We should state at the outset that there is no North Carolina case law interpreting G.S. §§ 105-130.34 and 105-151.12. Therefore, determining the answers to the questions you pose largely becomes a matter of statutory interpretation.

The North Carolina conservation tax credit statutes provide, in pertinent part, that

"[a] person who makes a qualified donation of interests in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes, shall be allowed a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in real property must be donated to and accepted by either the State, a local government or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions under the Code; provided, however, that lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under such regulations or ordinances shall not be eligible for this credit...." N.C.G.S. § 105-151.12.

Basically, then, a person (or corporation) must meet five requirements under North Carolina law to qualify for a conservation tax credit: (1) there must be a gift, i.e., a "donation"; of (2) a North Carolina real property interest; (3) to a governmental agency or non-profit entity organized to receive and hold conservation donations; (4) the donated property interest must be useful for a public land conservation purpose; and (5) local regulations must neither require the land involved to be dedicated for conservation nor allow it to be so dedicated to permit increased building densities on adjacent lands. Each of those requirements is discussed below, in turn.

The "donation" requirement of the conservation tax statutes means simply that the taxpayer must freely give the conservation easement or other interest in real property. In our opinion, this

requirement is satisfied despite the existence of a state law or rule requiring mandatory stream buffers. The state rule would presumably simply restrict the landowner's use of the lands within the buffer; it would not require the gift of any interest in those lands.

The second requirement that must be met to qualify for a conservation tax credit, that the gift must be an interest in real property in North Carolina, is satisfied under the scenario you present. A conservation easement is an interest in land. N.C.G.S. § 121-38(b).

In addition, the conservation tax credit statutes require that the relevant donation of a real property interest be made either to "the State, a local government or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions under the [state tax] Code ..." N.C.G.S. § 151.12(a); Accord, N.C.G.S. § 105-130.34(a). Again, there is no apparent issue as to this provision in the situation you present, where riparian conservation easements would be donated to either a governmental agency, or a land trust or other appropriate non-profit, conservation organization.

The tax credit statutes also require that the donated property interest be "useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes ..." N.C.G.S. § 151.12(a); Accord, N.C.G.S. § 105-130.34(a). The gift of a conservation easement in riparian lands would likely have no value for public access or use. Whether it would have wildlife value would depend both on the width of the corridor donated, and on its location in relation to and in connection with other suitable wildlife habitat areas. Based upon the current proposals to impose mandatory riparian buffers as a water quality protection measure, there would likely be significant conservation value to fisheries from the water quality benefits derived from the maintenance of even a narrow strip of riparian buffer lands (e.g., its function as a trap to sediment runoff and non-point source pollutants). Moreover, preservation of natural, riparian corridors would also provide the sort of public, scenic and aesthetic benefits sought to be promoted by the North Carolina Natural and Scenic Rivers Act. See N.C.G.S. §§ 113A-30 et seq. Because of those public, conservation-related benefits, it is our opinion that the donation of a conservation easement in riparian lands will generally meet the "public land conservation use" criterion of the conservation tax credit statutes.

Finally, the conservation tax credit statutes provide that in order for a property interest donation to qualify for a conservation tax credit, local governmental regulations must not require the land in which the property interest is donated to be dedicated for conservation purposes nor allow it to be so dedicated to permit increased building densities on adjacent property. This particular provision may lead to different results, depending on the method chosen for imposing mandatory buffers. For example, one method of achieving a mandatory riparian buffer zone to protect water quality would be for the General Assembly to enact a law similar to the Coastal Area Management Act ("CAMA"), N.C.G.S. §§ 113A-100 et seq., setting out state guidelines for riparian land use that must be reflected in and incorporated into local land use plans. Under the express wording of the tax statutes, if that regulatory route is chosen and local governments impose a mandatory buffer requirement, any landowner who donates a conservation easement in the lands required to be dedicated to conservation use to protect water quality would not be eligible to receive a tax credit for the donation. On the other hand, if a state agency such as the Environmental Management Commission, adopts rules which require mandatory riparian buffers as a statewide measure, there would be no local governmental regulation.

Sections 105-151.12 and 105-130.34 do not directly speak to the case where a conservation easement is donated in lands required by a state law or rule, rather than local ordinance, to be maintained as a riparian buffer zone. Given that omission, it is certainly possible to read that language as intentionally distinguishing between those instances where conservation dedication or a mandatory riparian buffer is required by state, as opposed to local, law. That, we believe, is the correct interpretation. Such an interpretation, however, would potentially discriminate against landowners in the various affected counties. For example, given legislative enactment of a CAMA-type land use scheme as suggested above, donors in those counties where the local government imposed the buffer requirement would not be eligible for a tax credit, while donors in counties where the State imposed the buffer requirement upon failure of the county to do so would be eligible for the credit. It is possible, we believe, that a court could find that this language was simply intended to reflect the state of North Carolina land use law at the time the conservation tax credit statutes were enacted (no state laws requiring maintenance of private lands in their natural state, but such regulatory powers vested in local governments to achieve local land use objectives), rather than to be limiting in nature, and rule that the tax credit was not available where a state rule required mandatory riparian buffers.

Based on the above analysis, it is our conclusion that where state law or rule requires a landowner to maintain a riparian buffer corridor to protect state water quality, donation of a conservation easement in that "protected" area would qualify its owner for a conservation tax credit under North Carolina law. However, as noted above, the statute does not unambiguously express this conclusion. The remaining question, what the value of that tax credit might be in light of the buffer requirement, is discussed below.

We note at the outset that the General Statutes do not mandate any particular methodology for appraisals in this area, and the value of the tax credit for donation of a conservation easement may or may not be influenced by the existence of a state law or rule restricting the use of the land, such as a mandatory buffer requirement. Under G.S. §§ 105-151.12 and 105-130.34, the donor of the conservation easement may claim 25% of the fair market value of the easement as a tax credit. In practical terms, the fair market value of a conservation easement granted on the same parcel of land that was subject to a mandatory riparian buffer requirement may be worth very little, and the tax credit of 25% of that fair market value would be worth even less.

In summary, it is our opinion that if the State were to require landowners to maintain specific riparian lands as a water quality buffer, the landowner's donation to the State (or a local government or land trust organization) of a conservation easement in those affected lands would qualify for a conservation tax credit under state law. However, the value of that donation, and thus the tax credit that may be claimed for it, would likely be negligible and is a determination that would be subject to scrutiny by the Department of Revenue.

Based on the foregoing analysis, it is our recommendation that if the General Assembly wishes to insure that property owners who donate a conservation easement on lands subject to a state rule requiring mandatory riparian buffers remain eligible for a state tax credit, it should so specify in the statute. In addition, any legislative considerations related to requiring mandatory riparian buffers should also include a recognition of the tax credit valuation issue as discussed above, and the General Assembly should be requested to clarify the appraisal methodology such that the imposition of the buffer requirement would have no effect on the value of the property donated for conservation easement purposes.

We hope this is responsive to your questions. Please contact Jill Hickey or Tim Nifong if you have any additional questions or feel that clarification is necessary.

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