

Legal Considerations Associated With Conservation Easements - The Land Trust Perspective

NC Soil and Water Conservation District
Working Land Easement Workshop
October 2008

Overview



- Focus on legal responsibilities
 - Selecting projects
 - Ensuring sound transactions
 - Qualifying for tax benefits
 - Monitoring and Stewarding Easements
- Landowner Questions/Goals
- Practices to Minimize Legal Liability
- Guiding Principles

Selecting Projects

- Conservation Values = Public Benefits
 - Baseline Documentation
 - Site Inspection
- Landowner Communication
 - Interviews
 - Long term goals/use of property
- Site Visits



Landowner Questions

- When did you acquire the property?
- What names are on the title?
- Do you own the mineral/water rights?
- Are you aware of any hazardous waste sites or underground storage tanks?
- Is the property encumbered?
- How do you currently use the property?
- How do you plan to use it in the future?

Landowner Goals

- What do you see as the primary value of the property to you and your family?
- Why do you want to protect the property?
- Do you wish to donate or sell an easement?
- Have you discussed these plans with your family?
- What do you consider to be the conservation/historic values you want to protect?
- Are you concerned about changes in local land uses that may impact the ability to conserve your property?

Landowner Communications

- Complex real estate transaction.
- Provide basic information on tax incentives.
- Advise landowner to seek independent tax and legal advice.
- Expenses – Who's responsible?
- Put it in writing.



Ensuring Sound Transactions

- Baseline Documentation/Survey
- Environmental Assessment/Due Diligence
- Title Investigation/Subordination
- Easement Drafting
- Appraisals
- Legal Review
- Recordkeeping



Qualifying for Tax Benefits

- IRS Requirements
 - Must be perpetual easement
 - Conservation values
 - Recreation, wildlife habitat, open space, farms, forest, historic land or structures
 - Monitoring
 - Qualified holder/File IRS Form 8283
 - Owner notification - IRS appraisal requirements
- NC Conservation Tax Credit
 - Conservation benefits
 - New guidelines



Monitoring and Stewarding Easements



- **Baseline Documentation**
 - Survey/Map
 - Conservation Values
 - Property Conditions-Photodocumentation
- **Annual Easement Monitoring**
 - Access to Property
 - Written reports
 - Endowment Funds
- **Enforcement of Easements**
 - Written procedures
 - Access to legal resources

Additional Legal/Liability Concerns of Easement Holders

- Easement Defense
- Easement Amendments
- Condemnation Action
- Transfer/Sale of Property
- Personal Injury Liability
- Indemnity/Insurance
- Property Taxes



Guiding Principles



- Landowner Relationship
- Documentation
- Simple/Specific Easement Language
- Annual Monitoring
- Access to Financial Resources for Monitoring, Stewardship and Enforcement
- Landowner Retain Independent Legal and Financial Advice

Contact Info

Edgar Miller
Conservation Trust for NC
319 Beck's Church Road
Lexington, NC 27292
336-793-8219
edgar@ctnc.org
www.ctnc.org