

## Article 4.

### Conservation and Historic Preservation Agreements Act.

#### **§ 121-34. Short title.**

The title of this Article shall be known as the "Conservation and Historic Preservation Agreements Act." (1979, c. 747, s. 1; 2004-195, s. 1.3.)

#### **§ 121-35. Definitions.**

Subject to any additional definitions contained in this Article, or unless the context otherwise requires:

- (1) A "conservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of land or improvement thereon or in any order of taking, appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming or forest use, to forbid or limit any or all (i) construction or placing of buildings, roads, signs, billboards or other advertising, utilities or other structures on or above the ground, (ii) dumping or placing of soil or other substance or material as landfill, or dumping or placing of trash, waste or unsightly or offensive materials, (iii) removal or destruction of trees, shrubs or other vegetation, (iv) excavation, dredging or removal of loam, peat, gravel, soil, rock or other mineral substance in such manner as to affect the surface, (v) surface use except for agricultural, farming, forest or outdoor recreational purposes or purposes permitting the land or water area to remain predominantly in its natural condition, (vi) activities detrimental to drainage, flood control, water conservation, erosion control or soil conservation, or (vii) other acts or uses detrimental to such retention of land or water areas.
- (2) "Holder" means any public body of this State, including the State, any of its agencies, any city, county, district or other political subdivision or municipal or public corporation, or any instrumentality of any of the foregoing, any agency, department, or instrumentality of the United States, any nonprofit corporation or trust, or any private corporation or business entity whose purposes include any of those stated in (1) and (3), covering the purposes of preservation and conservation agreements.
- (3) A "preservation agreement" means a right, whether or not stated in the form of a restriction, reservation, easement, covenant, condition or otherwise, in any deed, will or other instrument executed by or on behalf of the owner of the land or any improvement thereon, or in any other [order] of taking, appropriate to preservation of a structure or site historically significant for its architecture, archaeology or historical associations, to forbid or limit any or all (i) alteration, (ii) alterations in exterior or interior features of the structure, (iii) changes in appearance or condition of the site, (iv) uses not historically appropriate, or (v) other acts or uses supportive of or detrimental to appropriate preservation of the structure or site. (1979, c. 747, s. 2; 1995, c. 443, s. 1.)

#### **§ 121-36. Applicability.**

(a) This Article shall apply to all conservation and preservation agreements falling within its terms and conditions.

(b) This Article shall not be construed to make unenforceable any restriction, easement, covenant or condition which does not comply with the requirements of this Article.

(c) This Article shall not be construed to diminish the powers of any public entity, agency, or instrumentality to acquire by purchase, gift, devise, inheritance, eminent domain or otherwise and to use property of any kind for public purposes. (1979, c. 747, s. 3.)

**§ 121-37. Acquisition and approval of conservation and preservation agreements.**

Subject to the conditions stated in this Article, any holder may, in any manner, acquire, receive or become a party of a conservation agreement or a preservation agreement. (1979, c. 747, s. 4.)

**§ 121-38. Validity of agreements.**

(a) No conservation or preservation agreement shall be unenforceable because of

(1) Lack of privity of estate or contract, or

(2) Lack of benefit to particular land or person, or

(3) The assignability of the benefit to another holder as defined in this Article.

(b) These agreements are interests in land and may be acquired by any holder in the same manner as it may acquire other interests in land.

(c) These agreements may be effective perpetually or for shorter stipulated periods of time.

(d) These agreements may impose present, future, or continuing obligations on either party to the agreement, or their successors, in furtherance of the purposes of the agreement.

(e) These agreements may contain provisions which require the payment of a fee upon a future conveyance of the property that is subject to the agreement. (1979, c. 747, s. 5; 2008-165, s. 1.)

**§ 121-39. Enforceability of agreements.**

(a) Conservation or preservation agreements may be enforced by the holder by injunction and other appropriate equitable relief administered or afforded by the courts of this State. Where appropriate under the agreement, damages, or other monetary relief may also be awarded either to the holder or creator of the agreement or either of their successors for breach of any obligations undertaken by either.

(b) Such agreements shall entitle representatives of the holder to enter the involved land or improvement in a reasonable manner and at reasonable times to assure compliance. (1979, c. 747, s. 6.)

**§ 121-39.1. Termination or modification of agreements.**

(a) Easements secured by the Agricultural Development and Farmland Preservation Trust Fund, including perpetual agricultural conservation easements and forest land easements, military base protection and flyway easements regardless of funding source, or any other agricultural conservation easement that has been secured, in whole or in part, with federal funds and where at least one party to the agreement is a public body of this State, shall not be terminated or modified for the purpose of economic development.

(b) Prior to any modification or termination of a conservation agreement where at least one party to the agreement is a public body of this State, the agency requesting the conservation agreement modification or termination shall conduct a conservation benefit analysis. The criteria

for the conservation benefit analysis shall be established by the agency requesting the conservation agreement modification or termination. Conservation agreements may only be modified or terminated if the conservation benefit analysis concludes that the modification or termination results in a greater benefit to conservation purposes consistent with this Article.

(c) The conservation benefit analysis conducted by the requesting agency shall be reported to the Council of State prior to the vote of the Council of State on the final decision to modify the agreement.

(d) Notwithstanding any authority given to a public body of this State, including the State, any of its agencies, any city, county, district or other political subdivision, municipal or public corporation, or any instrumentality of any of the foregoing, to release or terminate conservation easements under other law, this section shall apply to conservation agreements that are intended to be effective perpetually or that are terminated or modified prior to the period of time stipulated in the agreement, and where at least one party to the agreement is a public body of this State, including the State, any of its agencies, any city, county, district or other political subdivision, municipal or public corporation, or any instrumentality of any of the foregoing.

(e) Parties to a conservation agreement may include a provision at the time an agreement is executed requiring the consent of the grantor or the grantor's successors in interest to terminate or modify the agreement for any purpose.

(f) Any agency managing a conservation agreement program may adopt rules governing its procedure for termination or modification of a conservation agreement, provided that any such rules may be no less stringent than the requirements of this section.

(g) This section shall not apply to a condemnation action initiated by a condemnor governed by Article 6 of Chapter 40A of the General Statutes or to a voluntary termination or modification affecting no more than the lesser of two percent (2%) or one acre of the total easement area of the conservation agreement when requested by a public utility, the Department of Transportation, or a government entity having eminent domain authority under Article 3 of Chapter 40A of the General Statutes. (2015-263, s. 13(a); 2017-108, s. 14.)

#### **§ 121-40. Assessment of land or improvements subject to agreement.**

For purposes of taxation, land and improvements subject to a conservation or preservation agreement shall be assessed on the basis of the true value of the land and improvement less any reduction in value caused by the agreement. (1979, c. 747, s. 7.)

#### **§ 121-41. Public recording of agreements.**

(a) Except as provided in subsection (c) of this section, conservation agreements shall be recorded in the office of the Register of Deeds of the county or counties in which the subject land or improvement is located, in the same manner as deeds are now recorded.

(b) Releases or terminations of such agreements shall be recorded in the same waiver. Releases or terminations, or the recording entry, shall appropriately identify by date, parties, and book and pages of recording, the agreement which is the subject of the release or termination.

(c) A conservation agreement entered into for the purpose of enrolling real property in a voluntary agricultural district pursuant to G.S. 106-737(4) is not required to be recorded unless such conservation agreement is irrevocable as provided pursuant to G.S. 106-743.2. (1979, c. 747, s. 8; 2011-219, s. 2.)

#### **§ 121-42. Citation of Article.**

This Article shall be known and may be cited as the "Conservation and Historic Preservation Agreements Act." (1979, c. 747, s. 9; 2004-195, s. 1.4.)