

STAFF REPORT

TO: Planning and Economic Development Committee
DATE: October 23, 2012
FROM: Robert W. Oast, Jr., City Attorney
SUBJECT: Potential Revisions to Conservation Easement at North Fork Watershed

As Council is aware, the North Fork Reservoir Watershed is subject to a conservation easement held by the Conservation Trust of North Carolina (herein "CTNC"). This easement was entered into in 1996, and was one of the first in North Carolina.

As Council is also aware, one of the recommendations of the 2011-12 legislative committee studying the water system was for the City to work with CTNC to clarify the easement to aid in the protection of the drinking water used by the water system.

Individuals experienced in the field of conservation easements have reviewed the 1996 easement and have identified several ways in which the North Fork Watershed easement might be revised to make it more consistent with current recommended practices. With this in mind, the City solicited proposals from law firms and selected the Asheville firm of Marshall, Roth and Gregory to assist us in this work. Lyman J. Gregory is the attorney from that firm who is handling this matter.

Mr. Gregory and I met last week and discussed several areas in the easement that should be considered for review and possible revision. We also reviewed information supplied by other conservation organizations, including the Southern Appalachian Land Conservancy, as well as the easement for the Waynesville watershed, which is more recent than the North Fork Watershed easement. Bearing in mind that the primary purpose of the watershed is to be a source of raw water for the water system, there is considerable overlap between that purpose and the purposes of land conservation. However, there are some areas where clarification is advisable.

1. Forest Management. The watershed was logged in the early part of the 1900's (before the City acquired it), but is now thickly forested. While one purpose of a conservation easement is to keep land in a natural or undisturbed state, some management of the forest within the watershed may be needed to ensure that the watershed fulfills its primary purpose of providing drinking water. A forestry management plan was prepared in 2004, but has not been implemented. Forestry management goes much beyond harvest-oriented logging to include such issues and road and trail maintenance and construction, stream health, fire control and emergency access, and control of invasive plants and insects. Active maintenance in these areas can be critical to maintaining forest health for drinking water purposes.

2. Recreation/Other Uses. The current easement allows the use of the watershed property for recreation purposes not inconsistent with the watershed use. The City has previously allowed a segment of the mountains to sea trail to cross the upper end of the watershed property. Other uses, such as the filming of "The Hunger Games" movie, have

occurred there. Consideration should be given to whether, where, and under what circumstances such uses may be permitted, and a process for reviewing those uses.

3. Water Treatment. The easement should clearly allow for the operation of water treatment facilities, including the storage of chemicals and the operation of the dam.

4. Unanticipated Uses. Because no easement or similar document can anticipate everything that might occur or any use that may need to be made of the property, more recent conservation easements contain provisions for considering such needs on a case by case basis.

5. Eminent Domain. If part of the property subject to the easement, or the easement itself, is ever the subject of eminent domain, a means could be established in the easement for ensuring that the holder of the easement, CTNC, is compensated for the loss of its interest.

6. Formatting. Current practice with conservation easements suggests that the North Fork Watershed easement could be reformatted in a manner that does not change its substance but makes it easier to use and understand, and provides for regular reviews and updates.

7. Property Identification Issues. The property description in the easement is somewhat vague, especially on the point of whether the dam, treatment facility, and other improvements are included in the easement area. The identification of the burdened property should be clarified and other description issues addressed.

Mr. Gregory and I will be attending the October 23 meeting of the PED Committee, and will be prepared to address these and other matters, and seek further policy direction from the Committee.

cc: Gary Jackson, City Manager