

WLRM Section 1 - Working Lands Preservation Training Manual for North Carolina Soil and Water Conservation Districts Preface

Disclaimer: The materials produced and distributed by the Community Conservation Committee of the North Carolina Association of Soil and Water Conservation Districts area intended to serve only as general guidance for local soil and water conservation districts involved in working lands preservation. These materials, including example conservation easement documents and all support documents, should not be used in lieu of professional legal advice. The Community Conservation Committee recommends that all legal documents be reviewed by an attorney licensed to practice in the state of North Carolina.

Need for Working Lands Preservation

“In the summer of 1996 human habitation on earth made a subtle, uncelebrated passage from being mostly rural to being mostly urban”. (3) North Carolina is experiencing this same population shift, and we are at a critical time in the landscape. North Carolina is faced with a high loss rate of prime farmland and timberland due to development, as our state transitions from a rural to a more urban population. Preserving working landscapes is important to maintaining a healthy environment, our cultural heritage, and providing the agricultural community with a method of carrying on their livelihood. Working lands provide the food and fiber of our daily lives. American Farmland Trust estimates “that we need another 13 million acres of farmland growing fruits and vegetables just for Americans to meet the minimum daily (nutritional) requirement” based on USDA 2005 guidelines. (7) Once development reaches the farm, if no mechanisms are in place to allow the farmer to make good long-term land management decisions, then we lose the self-sustaining ability our working lands give us. As more tracts of working lands are developed, farming and timbering infrastructure will not be supported or sustainable and no path will exist in the future for new farms to be created, or for timberlands to be harvested as working lands lose their economic viability.

Working lands economics, a traditional way of making a living in North Carolina, is often underrated by the general public and its large impact on the North Carolina economy is not common knowledge. “Even with dramatic shifts in the state economy and the rise of successful research and biotechnology companies, agriculture has remained the state’s number one industry, generating \$68 billion a year (now \$70 billion), employing nearly a fourth of the workforce and supporting jobs in rural areas of the state where industry and businesses are sorely needed.” (1) North Carolina’s forestry sector, which is heavily dependent on private land holdings, is the ninth largest forest industry in the nation, and in 2004 contributed \$4 billion to the State’s gross domestic product. Production of wood products such as furniture, pulp and paper, and lumber, is North Carolina’s second largest manufacturing industry and the North Carolina Forestry Association estimates that the forestry industry economic yearly impact to the state’s economy is \$29.7 billion. Tourism, a thriving economy in North Carolina and directly dependent on the

state's open spaces including working lands, is the eighth largest tourist economy in the nation. Approximately 65.4 million tourists visit North Carolina yearly, contributing \$14.2 billion to the state's economy. The military bases in North Carolina that contribute approximately \$12 billion to the state's economy are dependent on large tracts of undeveloped land to act as a buffer and to serve as training grounds. Based on reports of agriculture, forestry, tourism, and military activities, approximately \$133.9 billion of North Carolina's gross domestic product is directly, or somewhat indirectly, related to preservation of working land acreage. (2)

Increasingly, working lands are being taken out of production to make way for development, directly related to an influx of out-of-state residents. Census Bureau data indicates that North Carolina's population surpassed that of New Jersey in 2006 and by 2010 will pass that of Ohio and Michigan. North Carolina's population is projected to increase to 9.3 million by 2010, over 10.7 million by 2020, and over 12 million by 2030. Currently, an average of 277 acres of undeveloped land is developed daily, leading to over 100,000 acres of land developed yearly. Since 2000, approximately 310,000 acres of farmland have been lost and more than 5,500 farms have gone out of business. (2) Based on a study of data from the NRCS Natural Resource Inventory and compiled by the NC Public Interest Research Group, for every new person added to the state, two acres of land are developed. By 2030, North Carolina is projected to lose an additional 9.3 million acres of undeveloped land.

To maintain a healthy economy and allow room for smart growth, private landowners need as many options as possible to make long-term land management decisions. The North Carolina Land Trusts have a strong tradition in conserving open spaces in North Carolina and to date have preserved roughly 3 million acres. (4 & 5) Each land trust is governed by a board of directors that set priorities for targeting lands viable for preservation. Due to limited funding and staffing, land trusts across the state agree that the need of existing land preservation requests far exceed the workload they can manage. North Carolina Soil and Water Conservation Districts (SWCD) have a long history of delivering natural resource conservation assistance to private landowners and have an established, long-term trust relationship with local landowners. The North Carolina Cooperative Extension Service has established an effective delivery method for providing all sorts of educational outreach to all citizens of this state, and has historically provided expertise on education regarding land management decisions.

Working Lands are a complex issue in that once a conservation easement is in place, multiple land management decisions will need to be made. To move working lands preservation efforts forward, land trusts, SWCD, and Cooperative Extension should foster local relations to deliver a total package of expertise to landowners. To assist with this movement, it was recognized that SWCD need a particular set of resources readily available to determine how they can assist working lands preservation in this state.

Current State of Affairs

Due to the nature of their business, SWCD have always been a part of assisting the economic viability of working lands. The NC Agricultural Cost-Share Program requires a 10-year maintenance agreement to be placed on the property associated with most best management practices, which is comparable to placing a temporary easement on a piece of property. Many SWCD are actively involved in development and management of local Voluntary Agricultural

Districts within their respective counties as well as other farmland preservation initiatives. Below is a summary chart of levels of participation in areas of working lands preservation in ninety counties as of 2008.

2008 Survey Results from 86 SWCD

	Statewide		Coastal***		Piedmont**		Mountain*	
Zoning Regulations	71	79%	28	82%	27	90%	16	64%
Voluntary Agriculture Districts	60	67%	17	50%	22	73%	21	84%
Enhanced Voluntary Ag Districts	11	12%	0	0%	4	13%	7	28%
Countywide Farmland Protection Plans	32	36%	6	18%	15	50%	11	44%
County Purchase of Development Rights	10	11%	1	3%	3	10%	6	24%
SWCD Easement Holders	24	27%	10	29%	6	20%	8	32%
SWCD Owning Land	5	6%	2	6%	2	7%	1	4%

***Coastal = Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Cumberland, Dare, Duplin, Gates, Greene, Hertford, Hoke, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Sampson, Tyrrell, Washington, Wayne, Wilson

**Piedmont = Alamance, Anson, Cabarrus, Chatham, Davidson, Davis, Durham, Halifax, Forsyth, Franklin, Gaston, Granville, Guilford, Harnett, Johnston, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Scotland, Stanly, Stokes, Union, Vance, Wake, Warren

*Mountains = Alexander, Alleghany, Ashe, Avery, Buncombe, Burke, Caldwell, Catawba, Cherokee, Clay, Cleveland, Haywood, Henderson, Jackson, Lincoln, Macon, Mitchell, Polk, Rutherford, Surry, Transylvania, Watauga, Wilkes, Yadkin, Yancey

In 2004 the NCASWCD hosted a Summit on Working Lands Conservation at their annual meeting. The primary focus was conservation on privately owned working lands. Several new partnerships formed as a result of the meeting. The Division of Forest Resources hosted a series of summer workshops on Working Forests sparking greater conservation interest in forestry landowners. These efforts coupled with the One North Carolina Initiative led to a heightened sense of awareness of the need for working lands preservation.

Jerry Dorsett, a former employee of NCDENR's Division of Soil and Water Conservation now works as a statewide Working Lands Coordinator with NCDENR's Office of Conservation and Community Affairs. Jerry has worked his way across the state speaking with districts and land trusts as well as other conservation partners on the topic of working lands preservation and noted early on that while there were many experts in the field, there was no one source of information that a SWCD could be pointed toward when questions arose. He has been a part of many discussions with land trusts that are collaborating with SWCD on working land projects, and noted a need to share these stories statewide. Michelle Lovejoy, currently an Area Coordinator with the Division of Soil and Water Conservation, completed the Natural Resources Leadership Institute program in 2008 with a capstone project focused on assisting Alleghany SWCD in development of a conservation easement. Since the landowner had specific wishes for the future use of the property including educational purposes, Michelle worked with David Isner, the local Cooperative Extension agent to create an advisory group for future use of the property. Michelle also felt a strong need for a resource manual where lessons learned could be shared among all districts involved, and the resource could be updated as new resources are developed.

In the 2008 Program Objectives document of the North Carolina Association of Soil and Water Conservation Districts (NCASWCD) records that the Community Conservation Committee adopted the following policies and positions

- Create a statewide “Conservation Easement Workgroup” to:
 - Provide to all districts basic information about conservation easements, the benefits to district programs and landowners, and the existing legal framework for them; and,
 - Provide technical guidance and materials to Districts during the process of initiating and consummating arrangements with landowners, and/or government entities, interested in selling or donating conservation easements. **2008** (adopted as an Action Item 2009);
- Commend the Foundation for Soil and Water Conservation and the Farmland Preservation Committee for progress made in obtaining funding, producing technical materials, and organizing grant management training for SWCDs. **2008**
- The State Association encourages each conservation district in NC to get to know and develop a working relationship with the staff and board of the land trust(s) that cover their respective county. The objective of this working relationship should be to compliment the efforts and to draw on the expertise of each organization. These efforts should focus in on giving service to land owners who desire assistance in protecting and managing their land holdings. By June 2008, the Community Conservation Committee will set-up a subcommittee to look at conservation districts and land trusts working together most effectively. Representatives of CTNC and land trusts will be asked to serve on this committee. **2008**

The Foundation for Soil and Water Conservation was able to obtain a grant through Philip Morris Altria Group to assist with funding of the resource manual as well as hosting a round of training workshops. Grant writing workshops offered in Spring 2008 focused on SWCD obtaining resources for farmland preservation. An additional round of workshops was offered in Fall 2008, to give SWCD some tools to make decisions on how involved to become in conservation easements at the local level including liability and fiscal considerations.

A statewide workgroup was convened to provide technical support for the development of this manual. The farmland preservation workgroup members are listed in the chart below. Various professionals worked with Jerry Dorsett and Michelle Lovejoy to develop specific sections within this resource manual. A CD of resource material and one copy of the resource manual are being provided for every Soil and Water Conservation District office in North Carolina at the 2009 District Employee Workshop. A manual update will be developed and distributed at future District Employee Workshops. The long term goal is to host the resources online.

The NCASWCD has worked jointly with the Conservation Trust for NC in delivery of a grant obtained from the Tobacco Trust Fund. The grant provided funding for the Working Lands Subcommittee of the NCASWCD Community Conservation Committee to meet and evaluate issues related to SWCD holding easements. The subcommittee is comprised of regionally represented SWCD Supervisors, land trust partners and outside advisory agencies. A Working Lands Conservation Easement Guidance Document is the culmination of the investigations conducted by the subcommittee and is included in Section 7 of the 2010 manual updates.

In addition to the subcommittee work, the grant provided funding for training that was offered at the 2009 District Employee Workshop and a regional set of trainings in Spring 2010. The

trainings were meant to build on the sessions offered in 2008 and focused on technical issues surrounding holding easements such as easement drafting, baseline documentation reports, and monitoring guidelines. The third aspect of the grant was to assist with closing costs for easement projects on properties with a tobacco history that have partial funding from other sources and any projects with land trust and SWCD collaboration will receive special consideration.

During this process, staff continues to collect informal data on the role each SWCD is taking on in the conservation easement arena, including holding conservation easements, owning land, monitoring conservation easements for other entities. Please refer to the chart below for a completed list as of July 2010.

34 NC SWCD Conservation Easement Activity, July 2010	
SWCD Holding Easements Alleghany, Beaufort, Buncombe, Cabarrus, Chatham, Cumberland, Duplin, Durham, Fishing Creek, Franklin, Gaston, Gates, Harnett, Haywood, Hyde, Iredell, New Hanover, Onslow, Polk, Rowan, Rutherford, Stokes, Surry, Wayne	SWCD Owning Land Brunswick, Durham, New Hanover, Polk
	SWCD Monitoring Easements for other entities Alamance, Beaufort, Chowan, Gaston, Gates, Hertford, Hyde, Fishing Creek, Jones, Lenoir, Northampton, Orange

Future Activities

The NCASWCD continues to expand its efforts of the Working Lands Initiative. The Community Conservation Committee's 2011 Program Objectives include the following Action Items;

- The Community Conservation Committee will appoint a subcommittee to develop a conservation easement educational outreach strategy, focusing upon Financial Planners, NC Bar Association, Real Estate organizations, State Bar, Title Companies, North Carolina Home Builders Association, and other such organizations. ***2010, 2011***
- The Community Conservation Committee will request the Executive Committee to initiate an investigation to explore feasible options for securing legal assistance for conservation districts. Among options that may be considered are: 1) authorizing an attorney position in the Division of Soil and Water Conservation, 2) sharing an attorney with land trusts in N.C., or contract with land trust legal staff, 3) securing grant funding for legal services that can be accessed by Districts. This investigation will be completed and a report with a recommended course of action presented at the 2010 Fall Meeting of the Association's Executive Committee. ***2010, 2011***

The NCASWCD Legislative Committee's 2011 Program Objective include the following Action Items;

- The President of the Association and the Chairman of the Legislative Committee will secure a bill sponsor to introduce legislation into the 2011 general session to allow for Districts holding conservation easement to legally hold funds long-term for the management of conservation easements. ***2011***
- The Association will request the General Assembly to fully fund the NC Agricultural Development and Farmland Preservation Trust Fund as stated in Article 61 of NC General Statutes 106 – 744, for the purchase of Agricultural Conservation Easements that can be held by local Districts and other conservation entities. ***2010***

The NCASWC is in the process of evaluating options of legal assistance for SWCD and no report has been released as of July 2011. Session Law 2011 – 209 allows for SWCD to establish a special reserve fund to be used for maintaining conservation easements. For more information on this new authority, contact Dick Fowler. A subcommittee is being formed to address educational outreach materials as specified above. NCASWCD is keeping dialogue open for any future collaboration with local land trusts, CTNC, and the Foundation for Soil and Water Conservation. By late 2011 the Working Lands Resource Manual will be housed online for easier access.

SWCD Farmland Preservation Pilot Program Workgroup 2007-2009

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About this Resource

The Working Lands Preservation Resource Manual is an accumulation of material gathered from various conservation partners. The manual is meant only as a starting reference point and the writers encourage any interested districts to continue to request guidance from resource people referenced in this section as well as others. All sections contain website hyperlinks to documents and other resources used in drafting the manual. When the manuals were initially reproduced some resources were distributed via hardcopy and on the CD while other resources were only provided on the CD.

The first edition of the manual with an accompanying resource CD was made available to districts at the 2009 District Employee Workshop in Statesville with subsequent updates to be provided in the future via CDs only. The long range goal is to make all the information available on a web site. Please email Michelle Lovejoy at michelle.lovejoy@ncdenr.gov or Jerry Dorsett at jerry.dorsett@ncdenr.gov if your district has corrections to be made or would like to contribute to any of the Further Information Sources as well as CD Resources. Below is a summary of the contents of the manual.

Section 2 – General Easement Information for Landowners

Section 2 provides some general information regarding easements that Soil and Water Conservation Districts (SWCD) can use to educate a landowner who is interested in placing an easement on their property. The information is applicable whether your SWCD is holding the easement or only trying to provide basic knowledge to the landowner.

- **What is an Easement**
- **History of Easements**
- **Types of Easements**
- **Other Tools – Tax information and planning for the future**
- **Questions and Answers for Landowners**

Section 3 – Conservation Tools in the Toolbox

Section 3 provides a summary of programs and methods for furthering working lands preservation in your SWCD. It is not meant to be comprehensively inclusive and SWCD are encouraged to do research on their own or contact resource people for additional information.

- **General Information Literature**
- **Conservation Easements**
- **Agricultural Districts**
- **Countywide Farmland Protection Plans**
- **Purchase of Development Rights Programs**
- **Cost of Community Services**
- **Other Local Options – Tourism and Zoning**

Section 4 – Partners and Funding Sources

Every successful conservation effort is based around partnership and accessing the right tools. The organizations and funding sources as listed in Section 4 can be most helpful in land protection and other conservation activities. Land protection tools including easements represent costly and time consuming work that can be most efficiently carried out with partners. Section 4 presents information on North Carolina land protection partners and resources that every district should consider getting to know.

- **Basic Description of Land Protection Agencies and Organizations**
- **Federal Government**
- **State Government**
- **Organizations**
- **Funding Sources**

Section 5 – Financial Options for SWCD

The Financial Section 5 provides information on the cost of holding easements, stewardship, and long term monitoring. A brief overview will be provided of the Budget and Fiscal Control Act, a discussion on the purpose of maintaining long term funds and methods utilized by the land trust community.

- **Local Government Budget and Fiscal Control Act**
- **Costs to Holding an Easement**
- **Land Trust Methods**
- **Endowment Funds**

Section 6 – District Easement Programs

Land trusts, conservation nonprofits and SWCD are the primary organizations in North Carolina working in the arena of land stewardship. SWCD are frequently being offered easements, land ownership and stewardship opportunities. The District Easement Program Section 6 is meant to provide guidance to a SWCD considering holding an easement.

- **Reasons for District Easement Programs**
- **Considerations before Committing to an Easement Program**
- **Liability**
- **Six Steps to Starting a District Easement Program**
- **Next Steps – Easement Acquisition**

Section 7 – Model Working Land Easement Language and Process

Thousands of conservation easements have been written by hundreds of NGOs and government agencies over the past 25 years. No one ideal version of a conservation easement exists because each easement is written to protect the conservation values of a specific piece of property and to meet the needs of the current landowner. The Working Lands Conservation Easement Guidance Document will act as a preliminary guide to language options and easement considerations when drafting a conservation easement. The document is not intended as legal council and cannot be used as the only method of drafting an easement.

- **Model Conservation Easement**
- **Liability**
- **Other Considerations**

Section 8 – Stewardship Monitoring and Enforcement

Stewardship means enforcing protection of conservation values that are identified in a conservation easement as well as ensuring a long term monitoring program to verify compliance with the conservation easement. Holding a permanent easement equates to accepting an assignment of property stewardship from now until forever.

- **Funding – Why is it needed?**
- **Stewardship Funds and Methods of Management**
- **Easement Monitoring**

Section 9 – SWCD Case Studies

Invited SWCD provided a write up of current working land preservation activities their districts have been involved in. We would like to include more case studies in future additions, please contact Michelle Lovejoy or Jerry Dorsett if your district has a good story to share.

- **Introduction**
- **Alamance SWCD**
- **Haywood SWCD**
- **Polk SWCD**
- **Surry SWCD**
- **Wayne SWCD**

Section 10 – Glossary of Terms

Common definitions are provided to some of the frequently used words in this manual and related to working lands preservation.

Section 11 – Additional Resources

A listing of books and web sites on easements and related topics is provided.

Section 12 – Workshop Resources

Section 12 provides a summary of some workshops offered since 2004 in relation to the Working Lands Initiative including but not limited to agenda, presentations, and handouts.

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Further Information

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