

WLRM Section 5 - Financial Options for Soil and Water Conservation Districts

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.

The Financial Section will provide 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

Soil and Water Conservation Districts (SWCD) are considered by the state as a public authority and are obligated to adhere to GS 159 – The Budget and Fiscal Control Act (BFCA). The BFCA defines how moneys received by a public authority are to be managed. SWCD are legally able to conduct their own budgeting, financial administration and reporting or can enter into an agreement with the county to carry out the duties of the BFCA. Basic budgeting requirements include an annual budgeting process with a budget ordinance and maintaining a budget officer. Funds must be budgeting prior to disbursement. Several fiscal controls are laid out including maintaining a finance officer, conducting pre-audits, methods of disbursement, bank account guidelines, deposit requirements, conducting an annual independent audit, and bonding any employees. Before taking on any funds, please insure your SWCD is following guidelines as laid out in the Budget and Fiscal Control Act. A budget update should be provided at every SWCD meeting, allowing for adjustments within the year as necessary.

Each SWCD should be conducting long range planning for all activities with short (within a year) goals to long term goals (five years out). The strategic planning process will help identify what is most important and beneficial to your SWCD and lay out a map for fulfilling those goals. A fiscal strategic plan should be part of the process as well. Many adopted projects will need a funding support mechanism, whether you are saving to buy a truck or reviewing how many conservation easements your SWCD will hold in the next five years. The overall strategic plan should be reviewed yearly as a way to direct your future program course and as a method for measuring success of your programs. A fiscal plan will ensure your mission and goals are met and the information can roll into the budget planning process that is conducted each year. It is beyond the scope of this manual to provide specific tools for conducting a long range plan; it is recommended a SWCD call on assistance from the Division of Soil and Water Conservation as a starting point.

Costs to Holding an Easement

When a grantee takes on the commitment of holding an easement, they are agreeing to monitor and enforce the restrictions of the easement as needed in perpetuity. Easements are placed on a property so that the land is protected forever and the grantee must be fiscally sound to fulfill their obligations. The Internal Revenue Service requires that a qualified grantee must have the monetary resources to be able to monitor and enforce the conservation easement. Some direct costs of holding an easement include staff time as well as owning or having access to a vehicle to conduct yearly monitoring. Office space and supplies will be used to create and store documentation on the easement in electronic and hardcopy format. Each monitoring visit will require documentation in some report format to be completed once the visit is completed. Posting and re-posting boundaries will need to occur. Indirect costs are the difficult elements to plan for but become very important down the road.

If the easement is written to allow for some activities, such as continued farming, ensuring that these activities are being conducted without adversely affecting the easement will cost in additional staff time. Some properties come with current threats, such as development from an adjacent landowner crossing the property lines or the likelihood of neighboring properties conducting timber management where encroachment may occur. These types of issues will need to be closely monitored. Future threats always exist for any property but are not easy to predict. Current and future landowner characteristics are important issues to consider as well. The landowner you work with in drafting the easement may have a different level of respect for the easement than future landowners. Any grantee has to consider future issues where they would have to enforce and defend the easement, possibly with court action. The SWCD either needs to have an agreement in place that legal assistance will be provided by the county or keep enough funds in reserve to deal with any potential court cases.

Keep in mind that SWCD board can be sued collectively and each individual board member can be sued. The SWCD could be faced with a lawsuit from a future landowner not satisfied with an interpretation of the restrictions laid out in the conservation easement. A third party could sue if the SWCD were negligent in their conservation easement monitoring or enforcement actions. GS 139 allows for SWCD to call on the services of the NC Attorney General's Office, but the Attorney General's Office will make a final determination on if they can offer assistance in any court action and they will dictate the timing of such services based on staff availability and current resource levels. When planning for the development of your district easement program, all these considerations should be weighted very carefully.

Land Trust Methods

Over the course of several years of holding easements, land trusts have developed several methods of fundraising and multiple formulas for calculating the true cost of holding an easement and establishing a stewardship and/or enforcement funds. Many land trusts will not hold an easement without the landowner contributing monetarily. The landowners are educated on the true cost of drafting and maintaining the easement and how it is in the best interest of the property that funds be set aside. Landowners contribute in three basic ways; lump sum contributions, time payments, or transfer fees. A transfer fee is an amount donated to the land trust every time the property exchanges hands or a designated activity occurs such as the sales

from timber harvests. Land trusts also tap into resources provided by local, regional, state, and federal grants. Land trusts regularly conduct campaign drives and other general fundraising activities.

Some land trusts assume a base amount per acre that is a required donation. Currently for the NC Department of Environment and Natural Resources to accept donated properties into the Conservation Lands Stewardship Program, a fee of \$1,000 an acre is charged, with a 15 acre minimum. So the minimum required fee for the state to accept an easement is \$15,000. Recent internal reviews of the Conservation Lands Stewardship Program indicate the fee is too low to cover regular monitoring costs. When a land trust considers what is appropriate for any given easement they look at the size and accessibility of the property, land use on adjacent properties, how complex the reserved rights are within the easement, shared use of the property, etc. The North Carolina Coastal Land Trust considers that for tracts less than 250 acres, an estimated \$1080 cost for yearly monitoring is expected. The amount invested at 5% interest equals \$21,600; they request half from the landowner. Other formulas for establishing the stewardship costs of a property are provided in the Further Information Sources. As your SWCD program grows, you should track expenses of stewardship and enforcement and periodically re-evaluate if enough funds are being set aside.

Stewardship Funds versus Enforcement Funds

Holding a conservation easement means taking on two specific duties – yearly monitoring to ensure compliance and when violations are found, enforcement of the terms of the easement. Some land trusts view these two activities as having separate timelines, thereby having separate funding needs. It is common for land trusts to establish a stewardship fund as well as an enforcement fund for support of these activities. Stewardship funds will be invested to finance management of conservation easements and support monitoring activity costs. The funds will likely be accessed yearly. Enforcement or legal defense funds will only be needed when a violation occurs that cannot be mitigated outside of the court system. It is recommended that policies be put in place for use of these specific funds and consideration be given for refunding money used in court costs so enough is available to meet future needs.

Endowment Funds

An endowment is a fiscal tool that places restricted funds into an investment account. The endowment funds allow for withdrawing a small percentage each year to use while protecting the principle and assuring capital growth. Endowments are the fiscal tool of choice in the land trust community for providing yearly income for stewardship while maintaining a legal defense backstop. Endowment payout is a consideration, the higher the payout, the riskier the investment. Until the recent financial downturn, most conservation endowments were enjoying a maximum payout rate of 4% when one estimates the cost of fees and inflation. Endowment investment strategies are important to consider and three general options exist; for an organization to manage their own funds, to place the funds into a commercial institution, or to place the funds with a community foundation.

The current general statutes as laid out in the BFAC do not allow for a SWCD or a County to hold an endowment fund for conservation easements. For any SWCD considering management

of monitoring and/or enforcement funds a few avenues exist; establishing a relation with a local foundation or developing an agreement with a local land trust that currently manages their own funds. The North Carolina Association of Soil and Water Conservation Districts Legislative Committee and Community Conservation Committee are evaluating the current legislation and exploring options to expand authority of fiscal management for SWCD and Counties to include management of endowment funds for conservation easements. Legislation was introduced in the 2011 Session, Senate Bill 309. SB 309 passed the Senate and was sent to the Finance Committee in the House. If not approved this session, it will be included in the next session for consideration.

Foundations

A foundation is also known as a nonprofit organizations that is organized to either donate funds and support to other organizations, or to provide funding for its own charitable purposes. This type of non-profit organization differs from a private foundation which is typically endowed by an individual or family.

Based on recommendations provided by the UNC-CH School of Government, SWCD can invest funds with a community foundation. However, the funds should pass directly from the source, such as from a grant or the landowner, directly into the community foundation. If the funds first enter into the SWCD or county budgeting process it becomes SWCD/county funds and cannot then be released to be held as a long term investment by a third party. A small list of community foundations is provided in the further information sources. At the time of writing, these foundations have not been contacted to establish a relationship with the potential to hold endowment funds for SWCD. Additionally, the Foundation for Soil and Water Conservation will consider holding funds on a case by case basis. Please contact the Executive Director of the Foundation for Soil and Water Conservation for additional information.

For any SWCD considering endowment funds, a policy should be developed that defines how the funds are used such as an overall endowment, long term acquisition projects, stewardship, and enforcement. The policy should further define use of accrued interest and state when overall capital can be used. It is important to ensure growth rates keeps pace with inflation. The SWCD should evaluate and identify the terms of investment vehicle. What are the acceptable risk factors of the investment? What are the FDIC insurance limits? How quickly you will need to use the resources will affect the overall acceptable liquidity. Deciding the overall goals of the fund directly relates to types of funds to consider establishment of such as savings accounts, short-term certificates of deposits (CDs), treasury bills, and money market funds.

Listed below are points for consideration for any SWCD that decides to place endowment funds with a community foundation.

- Review a listing of community foundations in North Carolina and locate one or more foundation that is in your immediate area. One such listing can be found at the following web site <http://communityfoundationsnc.org/find.php>
- Contact at least two foundations and talk them about the SWCD and the need to manage endowment funds. Be prepared to share a copy of the district law, annual plan of work, charter and other pertinent documents. You should plan to talk about the SWCD board of

elected public officials who serve as the governing board that approves all actions and agreements, SWCD work with easements, perpetual management, as well as the source and purpose of the endowment funds.

- Questions to ask of any foundation.
 - Is there a minimum amount of funding required to start an endowment?
 - What is the specific start-up process the community foundation follows?
 - What information does the foundation need from the SWCD to get started?
 - What kind of administrative fee is charged for managing endowment funds?
 - Will the funds be managed for growth and if so what is the annual goal?
 - Once the initial funds are deposited, can additional funds be added in the future?
 - How will the SWCD be able to monitor the status of their funds and access their funds being managed by the foundation?
 - If there is a need in the future to withdrawal the total amount of the endowment funds, what will be the consequences of this action?
- After completing the research, a plan with a timeline should be put together and a decision made by the SWCD board and recorded in district meeting minutes.

Fundraising Methods

The land trust community raises a large portion of their funds to support individual projects as well as operating expenses through fundraising methods. Many laws exist to regulate the process of fundraising in the nonprofit arena. This discussion is a brief summary of some general concepts as laid out by the Land Trust Alliance Standard 5. For further study is it recommended you review the Land Trust Standards and Practices Guidebook. Please note that any SWCD considering fundraising, they should seek advice on compliance with the Budget and Fiscal Control Act.

Since some SWCD have nonprofit status it is worth evaluating the role of fundraising in the private sector. All fundraising should be conducted with the perspective of short term gains and long term goals in mind, contributors often develop relations with specific nonprofits, providing long term support and it is important to follow ethical standards to protect these relations. Any fundraiser should have a working knowledge of compliance with all state and federal laws. Nonprofits are required to file IRS Form 990, laying out details related to services offered, revenue and expenses including fundraising and administrative costs. Failure to compile will result in a loss of nonprofit status. Common state requirements include registration of the organization, filing of financial reports, and following paid solicitor requirements. Reasonable use of raised funds is also an important consideration; the Wise Giving Alliance provides further ethical guidelines on the issue of reasonable use. It is valuable for any fundraiser to understand charitable gift contribution deduction IRS rules to further protect the donor relations. For any gifts over \$250, a written letter verifying receiving the gift is required for tax deduction purposes. It is the requirement of the donor, but it is beneficial for the donee to understand the process and be prepared with template letters that meet IRS guidelines.

Further Information Sources

- Financial Administration of Soil and Water Conservation Districts. 2008. Compiled by Kara A. Millonzi. UNC-CH School of Government.
http://portal.ncdenr.org/c/document_library/get_file?uuid=c4ef391a-4f23-46a6-be61-e1b81696a32c&groupId=38358
- Tax-Exempt Organizations Alert. Sustaining Donations of Conservation Easements: Why Substantial Compliance May Not Be Enough and What Steps Your Organization Should take to Ensure Compliance. Miller Chevalier. 2009.
<http://www.millerchevalier.com/Publications/MillerChevalierPublications?find=22006>

Other General Resources

- Accounting, Fiscal Control, and Cash Management. County and Municipal Government in North Carolina Article 18. Gregory Allison. UNC-CH School of Government. 2007.
<http://sogpubs.unc.edu/cm/cmg18.pdf>
- Guidebook on the Law and Practices of Soil and Water Conservation in North Carolina. 2004. Ed. Milton Heath. UNC-CH School of Government. (One copy available in every SWCD office or can be purchased online at the university bookstore.)
- The Land Trust Standards and Practices Guidebook: An Operating Manual for Land Trusts. Volume I: Organizational Management, Standards 1-7. Rvs 2006. (To be purchased at www.landtrustalliance.org)

Resources on CD Only

- Finance Options for Districts handout. 2007. Compiled by Michelle Lovejoy.
- Stewardship Endowment Calculation Examples. 2008. Compiled by Charles Brummitt.
- Community Foundations Contact List. 2008. Compiled by Charles Brummitt.