

TWELVE STEPS TO CONSERVATION EASEMENT ACQUISITION

Compiled by:

Robin M. Hammond, Esquire¹
Agency Legal Specialist III
Division of Soil & Water Conservation
N.C. Dept. of Environment & Natural Resources
Raleigh, North Carolina

Compiled for:

North Carolina's Soil & Water Conservation Districts
March 3, 2003

Reformatted and Updated with Supplemental Information by:

North Carolina Division of Soil and Water Conservation
Spring, 2009

Updated by:

Robin M. Hammond, Esquire
Real Property Counsel
North Carolina Clean Water Management Trust Fund
Summer, 2010

¹ The author gratefully acknowledges resource materials obtained from the web sites of Catawba Lands Conservancy <<http://www.catawbalands.org>>, Bayfield (WI) Farmland Preservation Program <<http://www.brcland.org>>, Upper Valley (NH) Land Trust <<http://www.uvlt.org>>, Society for the Protection of New Hampshire Forests <<http://www.spnhf.org>>, Land Trust of Virginia, <<http://www.landtrustva.org>>, New Hampshire Land and Community Heritage Investment Program <<http://www.lchip.org>>, and the New Hampshire Land Conservation Investment Program <<http://www.state.nh.us/osp/LCIP/home.htm>>. The guidebook and forms are adapted from these materials, and the author claims no original authorship. Definitions in the Legal Glossary are taken from the attributed internet sources, the North Carolina General Statutes, Internal Revenue Code, U.S. Treasury Regulations, and *Black's Law Dictionary*, 4th ed. The author also acknowledges with appreciation comments and suggestions from Bill Flournoy of DENR's Office of Conservation and Community Affairs, and Tom Potter, Program Manager, Conservation Reserve Enhancement Program.

Introduction

As a conservation district, you've recognized the key role you play in natural resource protection in your community. So you are ready to take the plunge and start acquiring conservation easements and utilizing other land protection tools to assist your constituency in meeting conservation goals. If the answer for your district to that last question is yes, then this guide is for you.²

12 Steps Short list:

- Step One – Landowner Contact Initiated
- Step Two – Landowner Questionnaire
- Step Three – Preliminary Site Visit
- Step Four – Letter of Intent
- Step Five – Baseline Documentation
- Step Six – Project Development
- Step Seven – Due Diligence
- Step Eight – Finalize the Conservation Easement
- Step Nine – Final Inspection
- Step Ten – Closing
- Step Eleven – Publicity
- Step Twelve – Begin Stewardship

12 Steps Detailed list:

Step One – Landowner Contact Initiated

The most likely scenario is that the landowner will contact you regarding a particular piece of farmland or property that he wants protected from development or preserved for farming. You might get a referral from a land trust or other conservation group. Or, after consulting with a landowner on another project, you might reach out and offer protection for a special area, if you think such contact is appropriate under the circumstances.

Step Two – Landowner Questionnaire

Give the landowner a conservation questionnaire (see Appendix 1) to get him started thinking about his personal conservation mission and his goals for the property. The landowner will have questions on several topics. The questionnaire will help him focus on conservation easement issues and identify areas of concern. Be mindful that not all

² Throughout this guide, the word “you” is used interchangeably to refer to the District Board of Supervisors and the District staff, as individual and collective entities. It is assumed that the donated conservation easement will be the tool most often used for natural resource protection. However, some alternatives are identified in the Legal Glossary that is attached at Appendix 1.

landowners are financially capable of donating a permanent conservation easement. So, review with the landowner all the tools available to him, e.g., conservation easement donation (permanent or for a term), fee simple donation, bargain sale, lease-option, lease-purchase, reservation of life estate, testamentary devise, etc. Also, give the landowner general information about North Carolina's Conservation Tax Credit Program (which requires donations in perpetuity), and encourage him to speak with his own financial and legal advisers, as well as independent conservation professionals. See Appendix 2 for legal definitions and Appendix 3 for a summary of tax benefits that may result from a conservation easement transaction. Two other helpful brochures that you may wish to give to the landowner are *Protecting Your Legacy: Conservation Options for Agricultural Lands* and "Conservation Easements - An Introduction for North Carolina Landowners."³ If there is a mortgage on the property, the bank will have to be contacted to get an okay for an easement to be put in place. It is also recommended that no easement be accepted until title insurance is in place.

Step Three – Preliminary Site Visit

Undoubtedly, you will be very familiar with the property. But, you may not have viewed it recently with an eye toward natural resource conservation. You should meet at the site with the owner to discuss the property's conservation values and the owner's conservation goals.

Step Four – Letter of Intent

The landowner issues to you a letter of intent to proceed with proposed conservation transaction.

Step Five – Baseline Documentation

Whatever conservation tool is used, you'll need baseline documentation. Complete the process of inspection and documentation. You can prepare this report in-house (see Appendices 4, 5, 6 and 7).

Step Six – Project Development

Decide with the landowner how the conservation transaction will be structured. Consider your own conservation goals in addition to those of the owner. If a conservation easement is to be used, prepare a preliminary one for review with the owner. Prepare a conservation plan, forest management plan, recreation/public use management plan, budget and stewardship/monitoring plan, etc. as might be appropriate for the particular transaction.

³The first brochure is available from the North Carolina Department of Agriculture and Consumer Services. The second is available from Conservation Trust for North Carolina, 919/828-4199.

Step Seven – Due Diligence

Now is the time to undertake a title search of the property, commission a survey of the easement area (and the property as may be necessary) and review the baseline report. If any environmental concerns are noted, consider an environmental assessment. Consult with an environmental engineer and/or attorney as may be appropriate. If the landowner wants tax benefits from the transaction, he should commission an appraisal from an independent appraiser. Put the onus on the landowner to resolve any title and survey concerns to your satisfaction.

Step Eight – Finalize the Conservation Easement

Working with the landowner and any consultants or attorneys representing you or the landowner, finalize the terms of the conservation easement.

Step Nine – Final Inspection

Using the baseline report, inspect the property prior to closing to make sure there's been no change in conditions.

Step Ten – Closing

Execute the conservation documents and record appropriate documentation in the county registry. Generally, the buyer (you in this situation) pays the recording costs, but this is negotiable. However, don't wait until the day of closing to negotiate this point.

Step Eleven – Publicity

Arrange for appropriate press coverage or other publicity for the project. The level and type of publicity should be a joint decision between you and the landowner.

Step Twelve – Begin Stewardship

You assume responsibility for monitoring the easement (at least annually), maintaining a positive working relationship with the landowner. Issues regarding easement interpretation and enforcement are resolved by negotiation and mediation if possible. See Appendices 8, 9 and 10 for sample forms and checklists.

INDEX OF APPENDICES

Appendix 1 – Landowner Questionnaire

Appendix 2 – Legal Glossary

Appendix 3 - Summary of Tax Benefits

Appendix 4 – Baseline Inspection Checklist

Appendix 5 – Baseline Documentation File Checklist

Appendix 6 – Conservation Easement Baseline Documentation Report

Appendix 7 – Acknowledgment of Receipt of Baseline Documentation

Appendix 8 – Monitoring Inspection Checklist

Appendix 9 – Monitoring Documentation File Checklist

Appendix 10 – Conservation Easement Monitoring Inspection Report

Appendix 11 – Project Examples

APPENDIX 1

LANDOWNER QUESTIONNAIRE

[For use by North Carolina Soil & Water Conservation Districts]

Date _____
Name _____
Address _____

Phone _____
Fax _____
Email _____

Property Location & Acreage

This questionnaire is intended to help the _____ Soil & Water Conservation District understand your wishes for the future of your property so that your conservation easement will reflect your vision for the land. Please attach additional pages if necessary.

1. What do you want to protect your property for? _____

2. What do you want to protect your property against? _____

3. What are the significant conservation values of your property (streams, tree types, wildlife habitat, landforms, scenic views, historic structures)? _____

1. Here are some typical restrictions found in conservation easements. Please check all restrictions that you would like to see in your easement.

Restrictions on:

- Subdivision and development
- Commercial or industrial use
- New and existing buildings, structures, roads and other improvements
- Alteration of the land surface
- Mining or mineral development
- Waste dumps or landfills
- Utility lines, storage tanks, telecommunication towers
- Signs and billboards
- Any use or activity that causes soil degradation, erosion or pollution of waters (wetlands, streams, ponds, watercourses or wells)

2. Check any of the following land uses and activities that you would like to permit in the easement area.

Forestry

- No timber harvest allowed
- Limited timber harvest for personal use (firewood, fencing, removing diseased trees)
- Commercial timber harvest that maintains diverse age, class and species or restores woodland
- Unrestricted commercial timber harvest
- Other (specify) _____

Hunting/Trapping/Fishing

- No hunting allowed
- Hunting by property owner or permitted parties
- Lease to hunting club
- Open to hunting by the public
- Other (specify) _____

Recreational Use

- No public access allowed
- Public access by invitation only
- Pond, lake, stream, creek or river access
- Hiking
- Walking
- Bicycling
- Horseback riding
- Camping
- Other (specify) _____

Educational Activities

- Environmental education
- Agricultural education
- Agricultural research
- Demonstration site
- Other (specify) _____

Agricultural Uses

- Specify type and intensity _____

Vehicular Use

- No motorized vehicles allowed
- Limited vehicular use allowed (specify) _____
- Other (specify) _____

This questionnaire is not all-inclusive. It is designed to help you formulate your vision for the future stewardship of your property and your relationship with the _____ Soil & Water Conservation District. Please add your further thoughts and comments.

Other Items:

1. Are you the sole owner of this property? If not who else will need to be consulted?

2. Are there any debts, or liens on the property? Is so please explain?

3. Have you discussed with your heirs your intent to put an easement on this property?

4. Is a portion of the property going to be left out of this easement?

5. Do you intend to offer stewardship funds along with this easement?

6. Do you need the name of a: lawyer, accountant, surveyor and biologist who have experience in easement work to prepare documents and to aid you with processing for tax purposes?

7. Are you familiar with the concept of stewardship funds?

8. Are you in a position to provide funding for future monitoring and easement defense?

9. Would you be opposed to the conservation district applying for grant funds to cover these costs?

Return to: _____ Soil & Water Conservation District (provide address(

APPENDIX 2

Legal Glossary

See the chapter in this notebook titled “Glossary”.

APPENDIX 3

SUMMARY OF TAX BENEFITS

- Credit against North Carolina income tax owed (requires permanent easement or donation).
- Charitable contribution deduction from federal income tax owed (requires permanent easement or donation).
- Reduced basis in property that may be favorable for future estate tax calculation. (Advise the landowner to consult with his financial and legal advisors for the latest information in this area of tax law.)
- Avoidance of, or reduction, in capital gains tax
- Property may have a lowered present use valuation for ad valorem taxes

APPENDIX 4

BASELINE INSPECTION CHECKLIST

[For use by North Carolina Soil & Water Conservation Districts]

Prior to visit:

- Contact the landowner
 - Coordinate a time to meet him for a site visit
 - Invite owner to accompany you
- Gather materials
 - Copy of conservation easement
 - Survey
 - Topo map
 - Aerial photo
 - Soils map
 - Flood hazard map
 - Pens/pencils
 - Notebook
 - Blank *Baseline Inspection Report Form*
 - Camera/film/batteries/memory cards
 - Compass
 - 100' measuring tape
 - Flagging Tape
- Review easement

During the visit:

- Check in with landowner
 - Explain purpose of visit and route
 - Invite him to join you
 - Check-in with owner at the end of the visit if he did not accompany you
- Walk the areas of greatest concern
 - Boundaries with abutters
 - Interior trails and roads
 - Other easily accessed areas
 - Buildings included within the easement area
- Photograph the property to document current condition
- Complete a field copy of the *Baseline Inspection Report Form*
 - Take complete notes on the property's condition
 - Note and photograph any potential environmental problems or adverse conditions

After the visit:

- Fill out a final copy of the *Baseline Inspection Report Form*
- Document and label photographs
- Send a packet to the landowner
 - Include a copy of the Baseline Inspection Report Form
 - Include copies of the photographs
 - Include a blank Acknowledgement of Baseline Documentation Form for return to district office
- File material in a tabbed binder

APPENDIX 5

BASELINE DOCUMENTATION FILE CHECKLIST

[For use by North Carolina Soil & Water Conservation Districts]

1. Cover page.
2. Table of Contents.
3. Road map with directions to site.
4. Survey.
5. Topographic map of area showing boundaries of base tract and conservation easement area.
6. Landowner's questionnaire.
7. Conservation easement summary - including easement name, acreage, location, recording information, grantor's name, grantee's name, brief description of property's conservation values, brief description of easement purposes, and brief description of easement terms.
8. Copy of conservation easement.
9. Completed report form - including discussion of land use and ownership history, description and dimensions of buildings or structures on property, condition of property (noting current land use, unusual ecological, historical or geological features), specific areas or features of property that are restricted by the conservation easement, conditions that may change when landowner exercises any reserved rights, reports or inventories of rare and endangered species on or in vicinity of conservation easement area, general description of vegetation cover, soil types, flood plains, and full description of manmade features on parcel with necessary photographs, and other relevant information.
10. Photographs – numbered, dated, captioned and keyed to survey.
11. Sources and references.
12. Qualifications of preparer.
13. Acknowledgment of receipt of baseline documentation.
14. Opinions on Title (both preliminary and final with all attachments).
15. Title insurance policy.
16. Copy of appraisal.
17. Copy of environmental reports (if any).

APPENDIX 6

CONSERVATION EASEMENT BASELINE DOCUMENTATION REPORT

[For use by North Carolina Soil and Water Conservation Districts]

[intended to satisfy the requirements of IRC §1.170A-14(g)(5)]

Date of inspection: _____

Easement name: _____

Location: Road: _____
Town or Township: _____
County: _____

Proposed Easement term: _____

Grantor name:

Address: _____

Phone: _____

Fax: _____

Email: _____

Method of acquisition: Gift ___ Purchase ___ Bargain Sale ___ Other ___

If other, explain: _____

Vesting deed: Recorded in Book _____, Page _____, _____ County Registry

Total acreage of Base Tract: _____

Determined by: Survey ___ Deed ___ Tax Map ___ Other: _____

Total acreage of Easement Area: _____

Determined by: Survey ___ Deed ___ Tax Map ___ Other: _____

Supporting documentation in file: Topographic Map ___ Survey ___ Soils Map ___

Flood Hazard Map ___ Aerial photograph ___ Other

photographs: _____

Other documentation: _____

Property access: Public road ___ Private road ___ Recorded easement ___

Unrecorded "easement" ___

Frontage – feet of frontage on: Public road _____ Private road _____ Pond _____

Canal _____ River _____ Stream _____ Other _____

Condition of property boundaries: corner monuments/pins found ___ new survey ___

Condition of easement boundaries: surveyed and marked _____

Conservation Values (brief description): _____

Natural Features, Brief Description and Acreage:

- Forest

- Hay Field/Pasture

- Cultivated Field

- Wetlands

- Natural pond or lake

- Man-made pond or lake

- Swamp or bog

- Stream or river

- Ledge/rock outcropping

- Other

Describe the property condition, including land use and management, unusual ecological, historical, geological or other features. Include rare or unusual plant species, ecological communities and wildlife. Note any conditions or features that may change if the landowner exercises any reserved rights (use additional sheets as necessary): _____

List buildings or structures on property, including houses, sheds, barns, docks, utilities, etc. List dimensions and purposes and locate on an attached map (use additional sheets as necessary):

Public access proposed: None _____ Hiking/walking _____ Hunting _____

Other:

Proposed owner-reserved rights: _____

Adverse environmental conditions Noted: _____

Nearby local, state, federal or private conservation lands:

Tract Name	Adjoining (Y/N?)	Type of Protection	Owner	Town/Township	Acres

Miscellaneous Comments: _____

References/Sources: _____

List of Exhibits/Attachments: _____

Prepared by:

Signature: _____

(Printed) Name: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Preparer's Qualifications (may attach resume): _____

APPENDIX 7

ACKNOWLEDGEMENT OF RECEIPT OF BASELINE DOCUMENTATION

[For use by North Carolina Soil & Water Conservation Districts]

[intended to satisfy the requirements of IRC §1.170A-14(g)(5)]

The undersigned, being the grantor under that certain conservation easement (“Conservation Easement”) granted (or to be granted) to the _____ Soil & Water Conservation District (“District”), with respect to land located in _____ Township, _____ County, North Carolina (the “Property”), hereby certifies to District that the accompanying baseline documentation, which includes the related documents listed below, is an accurate representation of the Property and its condition on the date hereof. The undersigned agrees that the conditions documented in said baseline documentation do not necessarily represent the conditions of the Property allowed or required by the Conservation Easement, and that District in no way waives any rights at law or in equity to enforce the provisions of the Conservation Easement.

Executed under seal this the _____ day of _____, 200_.

GRANTOR:

_____ (SEAL)

Print Name: _____

Acknowledged by

_____ Soil & Water Conservation District

By: _____

Name: _____

Title: _____

Sworn to and subscribed before me
this the _____ day of _____, 200_.

Notary Public
Stamp/Seal

My Commission Expires: _____

Related Documents:

- Conservation Easement
- Baseline Inspection Report dated _____
- Photos (numbered 1 through ____ and dated _____)

APPENDIX 8

MONITORING INSPECTION CHECKLIST

[For use by North Carolina Soil & Water Conservation Districts]

Prior to visit:

- Contact the landowner
 - Coordinate a time to meet him for a site visit
 - Invite owner to accompany you
- Gather materials
 - Copy of conservation easement
 - Survey
 - Topo map
 - Aerial photo
 - Soils map
 - Flood hazard map
 - Pens/pencils
 - Notebook
 - Blank *Monitoring Inspection Report Form*
 - Camera/film/batteries/memory cards
 - Compass
 - 100' measuring tape
 - Flagging Tape
- Review easement

During the visit:

- Check in with landowner
 - Explain purpose of visit and route
 - Invite him to join you
 - Check-in with owner at the end of the visit if he did not accompany you
- Walk the easement area
- Photograph the property to document condition
- Complete a field copy of the *Monitoring Inspection Report Form*
 - Take complete notes on the property's condition
 - Note and photograph any potential violations of the easement terms and conditions

After the visit:

- Check field inspection report against prior inspection/base data and note changes
- Fill out a final copy of the *Monitoring Inspection Report Form*
- Document and label photographs
- Check with county tax office to see if property taxes are current
- Discuss potential violations with superiors/legal advisors and proceed accordingly

APPENDIX 9

MONITORING DOCUMENTATION FILE CHECKLIST

[For use by North Carolina Soil & Water Conservation Districts]

1. Conservation easement summary - including easement name, acreage, location, recording information, grantor's name, grantee's name, brief description of property's conservation values, brief description of easement purposes, and brief description of easement terms.
2. Copy of conservation easement.
3. Road map with directions to site.
4. Survey or Topographic map of area showing boundaries of base tract and conservation easement area.
5. Completed report form - including discussion of changes in land use and ownership, description and dimensions of buildings or structures on property, condition of property, specific activity in the conservation easement area, reports or inventories of rare and endangered species on or in vicinity of conservation easement area, general description of vegetation cover, soil types, flood plains, photographs, and other relevant information.
6. Photographs – numbered, dated, captioned and keyed to survey.

APPENDIX 10

CONSERVATION EASEMENT MONITORING REPORT
[For use by North Carolina Soil & Water Conservation Districts]

Date of inspection: _____

Easement name: _____

Location: Road: _____
Town or Township: _____
County: _____

Easement term: _____

Grantor name:

Address:

Phone:

Fax:

Email:

Conservation Easement deed: Recorded in Book _____, Page _____, _____ County Registry

Property taxes paid through current date? _____ yes _____ no

Method of Inspection: ground _____ aerial _____ other (specify) _____

Condition of Property Boundaries:

Condition of Easement Boundaries:

Conservation Values (brief description): _____

Surrounding land uses: _____

Any Change in ownership noted: _____

Any Change in use noted: _____

Describe the current property condition, including land use and management, unusual ecological, historical, geological or other features and any changes noted from last inspection. Note any natural features that have changed or been altered since the last inspection (use additional sheets as necessary):

List of all persons present during inspection: _____

Property inspected and report prepared by:

Signature: _____

(Printed) Name: _____

Title: _____

Address: _____

Phone: _____

Fax: _____

Email: _____

Inspector's Qualifications (may attach resume): _____

APPENDIX 11

PROJECT EXAMPLES

1. Duplin SWCD – holding several permanent conservation easements under the Swine Farm Buyout Program.
2. Hyde SWCD – holding permanent conservation easements under CREP and Swine Farm Buyout Program.
3. Onslow SWCD – holding a 40-year conservation easement, option to purchase, and an operating agreement with the owner for a working farm and environmental education center.
4. New Hanover SWCD – fee simple acquisitions of environmentally sensitive lands by gift and bargain sale of wetlands. Conservation easements will be utilized.
5. Gaston SWCD – acquisition of forestry conservation and farmland preservation easements. District has established a formal open space preservation program.
6. Cabarrus SWCD – is considering taking conservation easements. The local land trust has referred to the district landowners that are better suited to work with a conservation district than with a land trust.
7. Haywood SWCD – obtained a conservation easement aimed at stream bank stabilization as part of the settlement of an erosion and sedimentation control violation. The district has two other conservation easements in process, one for wetlands and the stream corridor mitigation, the other for general conservation purposes. Land has also been given to the district.
8. Beaufort SWCD holding easements under CREP and Swine Farm Buyout program.
9. Durham SWCD – holding an easement and land.
10. Chatham SWCD – holding multiple easements, one on farmland from an environmental firm for remediation that came with endowment funding and another on county owned park land.
11. Polk SWCD – holding a donated easement.
12. Alleghany SWCD – holding an easement that will protect land along a national heritage river that can be used for educational purposes.

Measuring Program Success

Your district should talk to the other land protection organizations operating in the county, with a goal of learning about their objectives and to share yours. One goal of the district board should be to understand land use trends, set goals, record and to publicize accomplishments. In addition, the district may want to conduct workshops, call in the media for reporting and to hold an annual celebration event on a farm. Publicizing success in land protection and stewardship normally results in a higher level of recognition and participation among citizens of a county. Land owners and public officials will want to be associated with your program, as the accomplishments mount and are recognized.