



NEW APPROACHES TO
CONSERVING WORKING LAND IN
North Carolina

This paper identifies the vulnerability of working land in North Carolina and demand for expanded working land conservation tools. We share recommendations for reform and experimentation as well as the blueprint for a new breed of land trust.

Prepared by the North Carolina Forestry Association's
Education and Conservation Foundation for the
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Direct inquiries to:
CARLA HARPER
West 65 Inc.
Carla@West65inc.com

This work is dedicated to Bob Slocum (1950 – 2012) a tireless proponent of forestry and all those who love and work the land

EXECUTIVE SUMMARY

Our research over five years indicates a growing demand in North Carolina (NC) for conservation opportunities uniquely designed for working land. However, we did not find organizations and tools that explicitly or adequately facilitate working land conservation needs and objectives. Potential exists, with the right structuring and reform, for our state to model a new breed of land trust that offers a full range of conservation options, provides enormous benefits, and lowers costs to the public. We believe that the window of opportunity to protect working lands at a reasonable cost will diminish over the next twenty years.

In NC, about 90 percent of our 31 million acres is privately held creating opportunity for self-reliance as individuals and a state.¹ Continued increases to the cost of maintaining working land coupled with lucrative conversion opportunities make the future of working lands and the people they support unpredictable. Three trends having influence on how land will “work” in the near future include the following:

- 1. As fewer people remain attached to the land financially, urbanization will continue to encroach on once rural, environmentally rich landscapes.*
- 2. Increasing financial rewards for converting land to industrial wind or solar energy, farming, or development may be attractive to heirs not dependent on the land.*
- 3. Corporate divestiture of timberlands to TIMO/REIT structures reduces the tie between land management decision making and the needs of local communities.*

This Discussion Paper Addresses Four Areas:

1. Opportunities for protecting NC’s working lands
2. Research that clarified landowner needs and demand for working land conservation tools in NC
3. Proposed approaches to a new breed of land trust
4. Recommendations to reform or enhance working land conservation

Benefits of Land Conservation and Opportunities

The sustainability of forests and the economic and ecological security they provide is predominately dependent on the ability to manage forests for ecosystem services and consumer goods while making a profit. The value of incentivizing private landowners to protect ecological values and services is undisputed. A vast number of programs support and fund land conservation.

[The National Conservation Easement Database](#), a voluntary data management and tracking system established by the U.S. Endowment for Forestry and Communities with numerous partners, has registered 22,204,790 acres of permanent easements to date.²

The permanent easement is for landowners willing to decouple development rights forever from a piece of land and “donate” or “bargain sell” those rights. In return, the landowner gets a range of publicly funded tax incentives and cash payments. Private, charitable donations also play a vital role in supporting permanent easements.

Term-limited easements are legal based on the laws that animate the modern conservation easement, but they do not qualify for tax benefits. Federal funding is available for term and permanent easements, and some government programs award term contracts. [The North Carolina Agricultural Development and Farmland Preservation Trust Fund](#) (NC Ag Trust) offers permanent and term. NC land trusts do not facilitate or hold term-limited conservation easements. We could not find a land trust or government entity handling term-limited conservation easements as a niche or specialty.

A New Breed of Land Trust - Working Lands Trust Inc.

[The North Carolina Forestry Association](#) (NCFA) formed a 501c3 organization in 2013 – Working Lands Trust Inc. (WLT). NCFA established WLT because our history, knowledge, and relationships are a bridge between private landowners and all approaches to conservation. Our mission is to encourage working landowners and their heirs to keep land healthy and productive.

In 2011 we released a paper entitled *Working Lands Protection: An Unmet Need in the American South*. In this work, we included estimated revenue and expenses for the first three years of WLT. The first year's expenses were anticipated at approximately \$300,000. We are working with a prominent NC law school, NC State University, NC State Forest Service, the NC Ag Trust, and others to develop contracts and protocols for a menu of flexible working lands services and terms ranging from 10-years to forever.

The information and ideas shared here are intended to continue the on-going, honest, and focused conversation about NC's working lands conservation potential.

ABOUT NORTH CAROLINA FORESTRY ASSOCIATION

Formed in 1911, North Carolina Forestry Association (NCFA) is the oldest conservation organization in the state. Our 4,000 members represent every aspect of the forest advocacy continuum from small lot tree farmers to universities and the last fully integrated forest products company in the state.

We work with our members and partners to foster plentiful, healthy forests and markets for sustainably harvested wood. This combination is the key to keeping forests as forests. Our four program areas include legislative affairs, training for forestry professionals, education, and communication.

NCFA is the parent organization to Forest Education and Conservation Foundation (FECF) and Working Lands Trust Inc. (WLT).

FECF develops and conducts education and conservation programs for loggers, teachers, children and forest landowners.

WLT facilitates the use and expansion of working land conservation tools.

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NORTH CAROLINA WORKING LANDOWNER STATISTICS

- *The average family landowner holds 29 acres and is 70 years-old. 9 Estate planning options for landowners and their heirs that incentivize keeping land healthy and productive are crucial.⁴*
- *Sixty-nine percent of the landowners in eastern NC are eligible for farm bill programs because the land is actively farmed or under some form of forest management. The average age of a NC farmer is 58.⁵*
- *TIMOs and REITs bought land at dramatic rates in the late 90s when the integrated forest product companies began selling. Developing tools that ensure continuation of the “supply agreements” that keep wood flowing to the remaining mills is important and perhaps a benefit conservation tools could facilitate.⁶*

Working Lands are Vulnerable



All of NC’s forests, farms and waterfronts are critical to environmental, economic, and military security. NC possesses 18.6 million acres of timberland. Non-industrial private landowners own sixty-four percent. Just 13 percent is non-industrial corporate and eight percent is industry owned.⁶

The forest products industry, employing over 68,000 people, is NC’s number one manufacturing industry, contributing \$3.1 billion in annual payroll.⁷ The industry relies heavily on private landowners to provide the raw materials used in manufacturing value-added forest products, from building materials to paper products and more.

Forestland ownership in NC, and the South as a whole, is following trends driven largely by increased costs for maintaining working land coupled with increased gains for converting land to industrial scale wind or solar energy, farming and forestry as well as urbanized development.⁸

Forest Product Company Divestiture

Beginning in the mid-1990s, a fundamental change began taking place in the ownership of private, commercial timberlands. Previously, “integrated timber companies” owned much of the land that supplied the raw materials for products. Seventy-nine percent of corporate land holdings have been divested with more than 46 million acres of industrial timberlands changing ownership.⁹ The new managers are about one-half Timber Investment Management Organizations (TIMOs) and one-third publicly traded Real Estate Investment Trusts (REITs)¹⁰ TIMOs and REITs both own forests on behalf of institutional investors.

While most of these lands are not scheduled for development, the new owners must consider “highest and best use.” Much of the land held by the TIMO and REIT community is still under active management and tied to 20-year “supply agreements” with the mills originally sourced by the land.¹¹ In eastern NC, approximately 80 percent of the 1.1 million acres of TIMO and REIT land is under a “supply agreement”.¹² An opportunity for working land conservation lies in developing tools that encourage the continuation of “supply agreements” with timber purchasers.¹³

Generational Transfer and Urbanization

Private landowners hold 86 percent of the forest area in the South.¹⁴ The average size of family forest holdings is 29 acres.¹⁵ Approximately 35 percent of family forest owners are 64 years or older.¹⁶

Nationally, the costs associated with farming and forest management have steadily risen. In many areas, including some parts of NC, the value of land has increased too.¹⁷ Farmers and ranchers earn a median annual income of \$61,000.¹⁸ Private Non-Industrial “tree farmers” in the Southeast can earn income at periodic intervals of 20 to 80 years, depending on many factors, including species, management fees, and input costs. Harvests can bring anywhere from \$200 to \$3,000 an acre.¹⁹

An opportunity for working land conservation lies in making up the delta for those landowners relying on annual crops or sustainable timber harvest rotations to run a business, pay property taxes, supplement other income, or support a family.



Our exploration of the need, interest, and “market” for working land conservation tools in NC began in 2009. We have discovered that many landowners in NC desire a full range of options from permanent conservation easement to diverse and flexible term-limited easements. Many want to practice conservation while working the land until they pass it on to their sons and daughters or sell for myriad reasons.

Research into Working Landowner's Needs and Preferences



Our Research Methods:

- Analysis of the literature on land conservation
- Study of federal and state history of incentives for land conservation
- Review of past and existing policy and programs surrounding land conservation
- Review of research and a pilot on working landowner preferences in NC
- Intensive landowner outreach across the state between 2009 and 2011 through workshops and one-on-one meetings with landowners in Pender, Carteret, Onslow, and Sampson Counties (In 2011, we applied to the NC Ag Trust for funding to acquire a 75-acre, 30-year conservation easement. Landowner readiness delayed the project. Additional projects ranging in size from 20 acres to 1,000+ acres are in various stages of discussion/research)
- Analysis of land trusts and formation of WLT as a potential facilitator of traditional and hybrid conservation tools to support working landowners
- Production of a video titled *What is a Working Forest Conservation Easement?*²⁰

North Carolina Specific Landowner Research

Two NC landowner research projects indicated a strong willingness on the part of landowners to participate in term-limited conservation as well as the unique opportunity for the WLT to facilitate working forest conservation arrangements..

In 2010, NC State University published –*Assessing Private Landowner Interest in Conservation Incentive Programs: A Report for Marine Corps Installations East and the North Carolina Farm Bureau.*²¹ Researchers surveyed North Carolina Farm Bureau board members in all 100 counties in the state generating a 78.3% response rate. A random selection of private landowners in 18 eastern NC counties responded to the survey at a 31.0% response rate.

More than 30% of landowners in both surveys indicated they would be interested in placing approximately 2/3 of their land in a conservation easement prohibiting development. Fifty percent or more of both groups said they would consider placing anywhere from 83 to 205 acres under contract for 5, 10, or 20 years. Fifty percent or more of both groups said they would consider restricted development rights within term contracts.

In 2012, the Market Based Conservation Incentives (MBCI) program, in partnership with the NC Foundation for Soil and Water Conservation (NC Foundation), initiated *Military Training Market-Based Conservation Eastern North Carolina Project*, a bidding pilot to test landowner willingness to act on preferences exhibited in the NC State survey.²² A reverse auction system, held initially in 17 participating counties, tested performance-based, 10, 20, and 30-year term-limited contracts for keeping land in military flight training route compatible practices.

The pilot program produced enough serious applicants to prove viability. Selected bids ranged from \$10 to \$27 an acre and averaged \$25 an acre for up to 30 years to maintain their properties in a flight path compatible state.²³ The research identified a number of issues to address in a working lands pilot effort:

- Term agreements cannot be treated with the same rigor applied to fee-simple or permanent easements, such as mandatory clear title 75 years back
- Existing default language in the contract should be limited to those things landowners can legally control.²⁴
- Forest management plans covering contiguous acres (inside and outside the easement area) should be acceptable if they meet NC State Forest Service specifications and CPA52 NEPA evaluation conducted²⁵
- Existing enrollment in Present Use Value should not be a requirement²⁶



WORKING LANDOWNERS NEED...

- *A menu of opportunities with varied length and scope to gain supplemental funds for working land*
- *A flexible, yet rigorous, “contract” easy to understand and implement*
- *Flexibility long-term to adjust to global markets and U.S. security needs*
- *Ability to continue private hunting leases*
- *Renewable supply agreements with negotiable terms*
- *County and state programs (PUV, Voluntary Ag District, etc.) and funding pools designed to reward landowners participating in land conservation*
- *Protection of the collateral their land holds to negotiate loans for equipment or additional commercially useful land, in the present and for their heirs*

Demand for a Working Land Conservation Trust in North Carolina



The persistence of private ownership anchored in working agricultural and forestry lands make NC a likely candidate for expanding the scope of land conservation tools and experimenting with hybrid approaches that add flexibility while generating public benefits. In 2007, the NC Land and Water Conservation Commission released a comprehensive report recommending that the General Assembly “further study the potential effect of time-limited conservation agreements on the State’s conservation and preservation efforts.”²⁷

There’s a gap in organizational capacity to facilitate hybrid forms of conservation that protect lands while they continue in a working status.

Some government entities will award and hold term instruments, including the NC Ag Trust and USDA Natural Resources Conservation Service. The NC Ag Trust statutes allow for payment of easement costs up to 100 percent in some cases, i.e. where counties identified as “tier one” have created farm preservation plans. The NC Ag Trust has awarded ten term-limited easements as of 2014.²⁸

Many more landowners initially pursued the term option with NC Ag Trust but settled on permanent easements because land trusts were able to bring federal and private funds to the table as well as expertise on how landowners could maximize tax breaks.²⁹

NC land trusts do not negotiate or hold term-limited easement nor will they consider holding an easement with terms less than forever.³⁰ The argument against term-limited easements is the loss of funding for both the land trust and the landowner. Land trusts rely on private donations, federal programs, and packages of federal, state, and local tax benefits to incentivize landowners and fund organizational operations, including legal defense of easements and on-going monitoring.³¹



NCFA, the WLT parent organization, brings a long history and wide breadth of expertise to working land conservation that engenders credibility with landowners. This earned reputation is invaluable, and one NCFA will protect. Formation of WLT is an extension of our interest in preserving working land as well as an organizational response to landowner-identified solutions for keeping working lands viable.

Developing a Working Lands Conservation Trust



We Envision the WLT Serving as a...

- Facilitator of conservation tools designed to match the full continuum of landowner and protection needs ranging from open space to rural jobs and military flight training routes
- Clearing house for working landowners interested in limiting development rights for a term or permanently in exchange for tax-related and cash incentives while continuing clearly defined sustainable timber or secondary product harvesting and farming as well as hunting and other forms of recreation
- Trust fund for organizations and agencies interested in funding the maintenance of working lands
- Place to leverage public and private dollars for working land conservation

Working Lands Trust Funding

Our funding strategy will include some or all of the following options:

- Individuals and private businesses that benefit from working land such as NC Farm Bureau, forest products companies, biofuels and biomass companies
- Foundations such as Z. Smith Reynolds, National Fish & Wildlife, the National Forest, the US Endowment for Forestry and Communities, Gaylord and Dorothy Donnelley and the Woodruff

- Federal and state grant programs
- Formulaic fees charged to timber purchasers sourcing wood
- Partnership agreements with MCIEAST, NC Ag Trust, Clean Water Management Trust Fund, and other state and federal partners
- Market-based initiatives like cooperative fueling depots, percentage of sales from participating companies, etc.
- A state conservation fund that receives its monies via a surcharge on products
- Timber sale revenues in exchange for easement monitoring

%

To date, the WLT remains at a think tank stage. A pilot process will test ideas for lowering costs, increasing flexibility and overall implementation.

Expanding Conservation Opportunities and Lowering Costs



A Menu of Landowner Choices

**Please note numbers and some concepts are hypothetical*

All WLT tools are intended to function as a form of contract. “A contract is a legally binding agreement reached between two parties, the terms of which the courts have the authority and obligation to enforce.”³⁵

All parcels are recorded with county assessors and a state registry eventually. Contracts include language in a “declaration of restrictions” that establishes acceptable levels of risk and demand for the landowner and partner entities. Ramifications for breach of contract are spelled out in unambiguous terms, i.e. forfeiture of payments, future program eligibility, etc.

Each option would correlate per acre payments distributed at five-year intervals as well as tax incentives with increasing levels of conservation. For example, a Type I contract might require nothing beyond current practices and maintaining status quo while Type III might require specific habitat or water quality measures.

	10- year	20-year	30- year	50-year	99-year
Type I -5-year interval payment -Eligible for state conservation grant funding -FORCES Partner* -Bonus Incentives***	\$5/acre	\$7/acre	\$10/acre	\$20/acre	NA
Type II -Type I plus... -State income tax reduction at X% for 30 years, increasing at 50 and 99 year -Auto PUV enrollment -Auto Ag District** -Interest rate reduction in participating loan programs	\$10/acre	\$20/acre	\$30/acre	\$30/acre + graduated income tax deduction	Graduated state income tax deduction, federal benefits
Type III Type I, Type II plus... -Safe Harbor **** -Eligible for state TDR program -Eligible for state PDR program	\$10/acre	\$20/acre	\$30/acre	\$30/acre + graduated income tax deduction	Graduated income tax deduction, federal benefits

*FORCES (Forest Opportunities for Resource Conservation and Environmental Security) offers additional technical assistance and cost share opportunities ³²

**NC Voluntary Agricultural Districts, where available, provide eligibility for state cost share funds up to 90 percent of costs (enrolled at 10-year intervals, rolls for 3 years afterwards until landowner extinguishes) ³³

***Option for bonus incentives when contracts are extended to the next tier. Re-enrollment is based on evaluation of land based on current conditions. For example, a natural disaster could compromise ecological value, development nearby could significantly increase the lands economic value

****Automatically eligible for "safe harbor" agreement where T&E species habitat exists or has the potential to exist and included in the management plan. Some lands eligible for additional payments based on T&E protection priorities ³⁴

Reducing Working Land Conservation Costs

The average cost to set up a permanent conservation easement is \$25,000 to \$50,000.³⁵ These costs are made up of conservation plans (or management plans where working land is involved), a baseline natural resources and human activity report, appraisals, title searches and recording, accountant fees, and a “mineral report” (if landowner does not own all the rights).³⁶ Additional costs can include transaction fees collected by the organization and monitoring donations (land trusts will suggest donating to a “stewardship endowment” to offset future management and monitoring expenses).³⁷WLT tools will cost less to set-up and monitor than most perpetual easements because they will be based largely on a set of predetermined criteria and formulas. As a result, they will require less time to establish, money to monitor and legally protect, and public funding to broker. Working land due diligence steps, like permanent easements, include survey, baseline evaluation of conditions, environmental review, appraisal, and management/conservation plan.

A Range of Costs for Conservation Easements	Low-End	High-End
Overall Application Process	\$25,000	\$125,000
Appraisal	\$3,000	\$10,000
Survey	\$3,000	\$25,000
Environmental Baseline	\$1,000	\$20,000
Title Search	\$250	\$10,000
Monitoring, Legal Defense	\$10,000	\$50,000
Management Plan	\$50	\$10,000

Factors lowering costs for working land tools:

- Clear title 30 year look back
- Appraisal conducted by any NC state certified appraiser using NC template
- Environmental baseline, management plans, and monitoring performed by state agents using NC template
- Lower or no pre-acquisition fee charged to landowner or agencies
- No costs associated with determining complex federal tax credits and IRS issues
- Fees based on a formula of size and duration. Landowners can claim up to 3 percent of the total 30 percent matching requirement with NC Ag Trust
- Legal defense minimal because failure to maintain stipulations in the contract/easement represents breach of contract and end of payments. NC Department of Revenue will collect stipulated pay-backs, if required
- Report directly to the Governor through the Agricultural Commissioner and the General Assembly via the NC Agricultural and Forestry Awareness Commission and The NC Land and Water Conservation Commission. This step directly addresses a need identified in 2007 by The NC Land and Water Conservation Commission³⁸
- Create a mandatory state registry for all land trusts and agencies to document publicly funded conservation easements or contracts³⁹



Nine Innovative Opportunities to Enhance Working Land Conservation in North Carolina

These suggestions represent a range of policy ideas, including state and federal statutory change. They are not in order of importance or viability.

1. Commission a NC Easement Reform Working Group charged with recommending standards, guidelines, and clear policy that will strengthen conservation easements



- Suggest a public process for evaluating public benefits and access to records ⁴⁰
 - Issue basic but mandatory guidelines for easement holders ⁴¹
 - Provide processes for termination, amendment, and third-party enforcement ⁴²
 - Create standards for public investment to reduce ambiguities in appraisal and tax standards⁴³
 - Clarify and connect policy, e.g. how do conservation easements tie to public land acquisition, regulation, and other programs as well as issues related to environmental justice and equity⁴⁴
 - Suggest terms for giving land trusts greater flexibility to sell easements back to landowners when conditions or needs change and use the funds to invest in new conservation projects.⁴⁵
 - Create standardized and appropriate appraisal standards that include contingent valuation factors in order to increase credibility and consistency⁴⁶
2. Initiate a North Carolina Land Conservation Grant Fund made up of federal, state and private dollars for creating term and permanent easements. Allow regulation and management by a state agency in partnership with NC Land Conservation Trust⁴⁷
3. Reform and Reinstate a NC Land Conservation State Income Tax Incentive Program

Reward all NC landowners participating in 20-year or longer land conservation contracts or easements with a simplified, static rate of income tax credit based on a transparent set of guidelines.

The 1983 NC Conservation Tax Credit (G.S. 105-151.12; G.S.105-130.34) represented the first state conservation easement income tax credit (not a tax deduction).⁴⁸ Only permanent easement donors could claim the income tax credit - up to 25 percent of the donation value - capped at \$250,000 for individuals and \$500,000 for corporations and partnerships (NC is the only state to allow corporations to hold easements).⁴⁹ Unused portions could carry forward for five succeeding years.⁵⁰ The provision was removed in 2014 as part of larger tax reform in the state.⁵¹

4. Lobby to improve the effectiveness and accountability of conservation easements by rewriting federal tax laws to include certain term-limited easements

Allowing federal and state tax subsidies to flow to both term and permanent easements will help restore market mechanisms hindered by current tax law.⁵²

5. Create rules that make properties listed on a state registry with a minimum 20-year conservation contract eligible for county-level programs that reduce property taxes or offer other incentives, e.g. Present Use Value, Voluntary Agricultural District or Purchase Development Right programs

6. PASS a NC version of California's Williamson Act

California's Williamson Act⁵³, initiated in 1965, gives property tax incentives to landowners who place agricultural or open space easements on property for a minimum of 10 years under a "rolling contract" with local government. The Open Space Subvention Act of 1971 provides local governments an annual subvention of forgone property tax revenues from the state.

7. Pilot a NC Transfer of Development Rights Programs

A TDR program allows a developer to build more intensively in an urban-growth area by paying for the "rights" set aside by a rural property owner willing to initiate an easement.⁵⁴

8. Pilot a NC version of Virginia's Purchase Develop Right Program with a will-ing Voluntary Agricultural District Board

Virginia's Purchase Development Right Program is guided by the Virginia Open Space Land Act, which encourages counties to include Purchase Development Right (PDR) programs in their ordinances.⁵⁵ Twenty-one counties participate.⁵⁶ Spotsylvania County, Virginia supports their program with local funding. They allow terms, beginning with twenty- years, for a PDR easement. Oversight takes place through a counsel appointed by the county board of commissioners.

9. Experiment with elements of the Costa Rican Payments for Environmental Services Program

The Costa Rican Payments for Environmental Services Program (PESP) is a market-based approach to incentivizing land management decisions that protect primary forest, allow secondary forests to flourish, and promote forest plantations to meet industrial demands for lumber and other wood products.⁵⁷

Through the PESP, landowners receive direct payments for the ecological services their lands produce. The program is administered through local NGOs with financing via a tax on fuel sales and payments to the NGO (FONAFIFO) from private sector firms such as renewable energy producers and water bottlers. Established for future potential use is the sale of Certified Tradable Offsets (CTOs). The Global Environmental Facility has also donated \$8 million to FONAFIFO to support the program.

From 1997 to 2001, 283,384 hectares of forest were added to the program with payments of \$57 million.

The program requires participants to submit detailed sustainable forest management plans certified by a licensed forester. These practices must be maintained throughout the life of the contract/easement. Participants must also cede any carbon credits to the program. Commitments associated with the environmental service contracts are registered with the deed to the property and “run with the property” where possible.

PESP contracts are based on 5, 15, and 20-year commitments to various levels of forest management and conservation practices. Each contract is renewable every five-years. Payments are distributed at percentages at five-year increments.

For example, with a 15-year commitment the landowner gets the equivalent to \$327 per hectare. Each year the landowner gets a percentage of that amount, i.e. \$65 per year for each hectare actively enrolled in the program. The distribution starts over at year six and so on. Reforestation projects enter at 15-years commitments with 50 percent payout at end of the first year and smaller increments over the next four years.

Conclusions



All agree that conserving working land is a top priority. The forest landscape in NC, and across the South, is changing dramatically through urbanization, shifting corporate ownership, and inter-generational land transactions. Conservation easements are a valuable tool on many levels. However, the unwillingness of most land trusts to offer term-limited opportunities or the range of flexibility sometimes needed to maintain working lands, creates a gap in capacity for NC.

The WLT will pursue continued research and funding opportunities to create models for all land trusts. The next logical step involves a working lands pilot program focused on protecting a full range of land values across NC by expanding opportunity while lowering the cost of term and permanent easements.

References



