

NORTH CAROLINA'S OPEN SPACE FUNDING PROGRAMS

I. Overview

Development pressures have increasingly threatened North Carolina's open spaces, wildlife habitats, and native biodiversity. Between 1982 and 1997, North Carolina experienced an 88 percent increase in urbanization, as well as an increased conversion rate for forest, farm, and rural lands. In response, the state has created a variety of programs and initiatives to preserve open space, natural resources, wildlife, and habitats.¹ Several trust funds exist for the public finance of open space acquisition, including the Natural Heritage Trust Fund (NHTF), the Parks and Recreation Trust Fund (PARTF), and the Clean Water Management Trust Fund (CWMTF). The NHTF and PARTF protect open space primarily for the protection of biodiversity and wildlife, among other purposes, and so are the focus of this review.² The NHTF also has specific authority to prioritize the acquisition of lands based on biodiversity values; PARTF's biodiversity conservation authority is more general. The NHTF is interested in utilizing North Carolina's wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) during its grant application review process, but has not yet determined how the plan will be utilized. As of 2005, PARTF does not anticipate integrating the wildlife action plan into its land protection prioritization processes.

In addition to these funding programs, conservation groups in the state are currently implementing a major land conservation initiative and a comprehensive statewide conservation plan. The Million Acre Initiative began in 1999 (and has since formalized a Million Acre Plan) with the goal of increasing North Carolina's permanently protected lands by 35 percent (one million acres) by 2009.³ Concurrently, through the One North Carolina Naturally initiative, the North Carolina Department of Environment and Natural Resources (NCDENR) is coordinating a statewide comprehensive plan for land and water conservation that involves multiple parties throughout the state.⁴ The two trust funds highlighted in this review, the NHTF and PARTF, play a key role in advancing these initiatives.

II. North Carolina's Open Space Funding Programs

North Carolina Natural Heritage Trust Fund

Established in 1987, the North Carolina Natural Heritage Trust Fund (NHTF) provides grants for land conservation and the inventory of natural areas. Authorizing legislation states that the

¹ North Carolina Department of Environment and Natural Resources, North Carolina Million Acre Plan, *available at* <http://www.enr.state.nc.us/docs/millionplan.pdf> at 21 (last visited August 23, 2005).

² While the CWMTF does not have authority to protect land specifically for biodiversity purposes, selected water quality projects often have benefits to wildlife and habitats.

³ N.C. GEN. STAT. Art. 17, § 113A-241. *See also:* North Carolina Department of Environment and Natural Resources, *One North Carolina Naturally Draft Plan (April 2003)*, *available at* <http://www.enr.state.nc.us/officeofconservation/images/DraftwithMaps2.pdf>.

⁴ North Carolina Department of Environment and Natural Resources, Office of Conservation and Community Affairs, *One North Carolina Naturally, Mission and Principles*, *at* <http://www.enr.state.nc.us/officeofconservation/pages/mission.html> (last visited August 30, 2005).

program may expend funds “to acquire land that represents the ecological diversity of North Carolina.”⁵ The NHTF may also fund the inventory of natural areas by the state’s Natural Heritage Program (NHP), a separate administrative entity, in addition to state agencies for the acquisition of natural areas.⁶ Since 1987, NHTF grants have helped protect over 178,254 acres of land.⁷

A twelve-member Board of Trustees administers the NHTF and awards land acquisition grants to state agencies. The Governor appoints four board members (including the chairman) and the General Assembly appoints the remaining eight members.⁸ NHTF staff, housed within the NCDENR, provide support to the Board.

Program Funding. Twenty-five percent of the state’s deed stamp tax, as well as \$15 from the sale of each personalized license plate, are dedicated to the NHTF.^{9,10} Annual funding for the program varies, but averages around \$12 million. In Fiscal Year 2003-2004, the NHTF received approximately \$15.8 million and awarded \$14.5 million in grants that helped protect 20,982 acres.¹¹ Since 1987, the program has awarded 264 grants totaling \$97 million.¹²

NHTF grants are available to four state agencies: NCDENR, the Wildlife Resources Commission, the Department of Cultural Resources, and the Department of Agriculture and Consumer Services.¹³ Each year, the NHP recommends high priority sites for conservation to the state agencies. The agencies then submit proposals to the NHTF. NHP inventories are also eligible for NHTF grants.¹⁴ There is no required match for grant awards, although the NHTF Board expects proposals to include matching funds.¹⁵

Land Protection Strategies. The NHTF’s authorizing legislation specifies that funds should go toward the acquisition of: “land that represents the ecological diversity of North Carolina, including natural features such as riverine, montane, coastal, and geologic systems and other natural areas to ensure their preservation and conservation for recreational, scientific, educational, cultural, and aesthetic purposes;”¹⁶ “additions to the system of parks, State trails, aesthetic forests, fish and wildlife management areas, wild and scenic rivers, and natural areas

⁵ N.C. GEN. STAT. Art. 5A § 113-77.9.

⁶ North Carolina Department of Environment and Natural Resources, North Carolina Natural Heritage Trust Fund Award Report Fiscal Year 2003/04 (on file with author).

⁷ North Carolina Department of Environment and Natural Resources, *supra* note 3, at 12.

⁸ *Id.* at 1.

⁹ North Carolina Department of Environment and Natural Resources, *supra* note 6.

¹⁰ In addition to these funding sources, the North Carolina General Assembly passed legislation in 2004 allowing the NHTF, PARTF, and CWMTF to incur up to \$45 million of special indebtedness, collectively, to acquire lands near military bases and to expand existing state parks, to provide gamelands, to help protect rivers, to provide new state parks along rivers, and to provide capital improvements for an expanding state park. 2004 N.C. Sess. Laws 179.

¹¹ North Carolina Natural Heritage Trust Fund, *North Carolina Natural Heritage Trust Fund*, at <http://www.ncnhtf.org/> (last visited Apr. 11, 2006).

¹² North Carolina Department of Environment and Natural Resources, *supra* note 3, at 13.

¹³ North Carolina Natural Heritage Trust Fund, *supra* note 11.

¹⁴ N.C. GEN. STAT. Art. 5A § 113-77.9(c).

¹⁵ Telephone Interview with Linda Pearsall, Program Director, North Carolina Department of Environment and Natural Resources (Mar. 15, 2005).

¹⁶ N.C. GEN. STAT. Art. 5A § 113-77.9(b)(1).

for the beneficial use and enjoyment of the public;”¹⁷ and “land that contributes to the development of a balanced State program of historic properties.”¹⁸ Authorizing legislation further stipulates that the board prioritize land with “outstanding natural or cultural values,”¹⁹ which are lands identified by the NHP as “having State or national significance.”^{20,21}

In practice, ecological considerations are by far the most important factor in NHTF land acquisition funding decisions.²² State law instructs agencies to include the following information in land acquisition proposals: “the value of the land for recreation, forestry, fish and wildlife habitat, and wilderness purposes, and its consistency with the plan developed pursuant to the State Parks Act, the State’s comprehensive plan for outdoor recreation, parks, natural areas development, and wildlife management goals and objectives;” “any rare or endangered species on or near the land;” “whether the land contains a relatively undisturbed and outstanding example of a native North Carolina ecological community that is now uncommon;” “whether the land contains a major river or tributary, watershed, wetland, significant littoral, estuarine, or aquatic site, or important geologic feature;” and “the extent to which the land represents a type of landscape, natural feature, or natural area that is not currently in the State’s inventory of parks and natural areas.”²³

State agency natural area acquisition project proposals often include NHP data. NHP’s site identification methodology was developed by The Nature Conservancy and is shared by the Natural Heritage Network and NatureServe.²⁴ The methodology focuses on field identification and evaluation of significant natural areas and rare species occurrences.²⁵ NHP’s approach to biodiversity conservation begins with natural heritage elements, which include “species that are rare and need special attention to prevent their extinction” and “natural community types that cover the range of high level ecological diversity and can serve as a coarse filter for less rare species.” The NHP inventories and maintains a database of all occurrences of natural heritage elements in the state. Using this data, the NHP identifies “sites particularly worthy of conservation action” as Significant Natural Heritage Areas (SNHAs). SNHAs are sites where

¹⁷ N.C. GEN. STAT. Art. 5A § 113-77.9(b)(2)

¹⁸ The Board is authorized to spend up to 25 percent of available funds on historic properties. N.C. GEN. STAT. Art. 5A § 113-77.9(b)(3).

¹⁹ N.C. GEN. STAT. Art. 5A § 113-77.9(b1).

²⁰ *Id.*

²¹ An NHP rating of “national significance indicates a site that contains one of the handful (generally five) of the best examples in the nation for one or a combination of natural heritage element(s).” A rating of “state significance indicates a site that contains one of the handful of best examples in the state for one or a combination of natural heritage elements.” North Carolina Natural Heritage Program, *Site Significance Rating Process* (Mar. 2005) (on file with author).

²² Pearsall, *supra* note 15.

²³ Proposals must also include the following information: “other sources of funds that may be available to assist in acquiring the land;” “the State department or division that will be responsible for managing the land;” “what assurances exist that the land will not be used for purposes other than those for which it is being acquired;” and “whether the site or structure is of such historical significance as to be essential to the development of a balanced State program of historic properties.” N.C. GEN. STAT. Art. 5A § 113-77.9(a).

²⁴ North Carolina Department of Natural Resources, Natural Heritage Program, *Our Mission*, at <http://www.ncnhp.org/pages/mission.html> (last visited Aug. 25, 2005).

²⁵ Pearsall, *supra* note 15.

“elements are present, viable, and believed to be particularly significant to biodiversity conservation.”²⁶

The NHP uses a wide variety of biological information that is gathered by staff field biologists, the Wildlife Resources Commission, museums, academic institutions, environmental consulting firms, nonprofit conservation organizations, and other state and federal agencies. In identifying sites and determining site significance, the NHP gives equal consideration to sites that would supplement existing protected areas and new high priority areas.²⁷ The NHP continually updates their significant natural area inventory in order to prioritize future acquisitions.

Protection in Perpetuity. The NHTF Board of Trustees requires that lands acquired with NHTF monies be designated as North Carolina Nature Preserves.²⁸ Nature Preserves are held in trust by the state and cannot be disposed of “without a finding by the governor and Council of State that the other use or disposition is in the best interest of the state.”²⁹ Removal of the designated Nature Preserve status is extremely rare.³⁰

State agencies are authorized to enter into management agreements with local government units or nonprofit organizations to assist in managing protected sites.³¹ While the board has authority to fund conservation planning activities for protected areas,³² it has yet to dedicate money for those purposes.³³

North Carolina Parks and Recreation Trust Fund

Established by the General Assembly in 1994, the North Carolina Parks and Recreation Trust Fund (PARTF) is the state’s primary funding source for building and renovating state park facilities and acquiring new state park lands.³⁴ PARTF is housed within NCDENR’s Division of Parks and Recreation, which operates the North Carolina State Parks System. Land protection strategies are driven by the division’s mission, which includes protecting North Carolina’s “natural diversity”³⁵ and preserving the state’s “unique archaeological, geologic, biological, scenic, and recreational resources” (as specified in the State Parks Act).³⁶ PARTF monies are allocated as follows: 65 percent for state parks, 30 percent for 50/50 matching grants to local governments for park and recreation purposes, and five percent for the Coastal and Estuarine

²⁶ North Carolina Natural Heritage Program, *supra* note 21.

²⁷ Pearsall, *supra* note 15.

²⁸ North Carolina Natural Heritage Trust Fund, *supra* note 11.

²⁹ N.C. GEN. STAT. Art. 9A § 113A-164.7.

³⁰ In fact, a removal has occurred only once, for a two-acre site. Email from Linda Pearsall, Program Director, North Carolina Department of Natural Resources, to Ben Gerhardtstein, Research Associate, Environmental Law Institute (Sept. 19, 2005, 15:35:32 EST) (on file with author).

³¹ N.C. GEN. STAT. Art. 5A § 113-77.9(d).

³² N.C. GEN. STAT. Art. 5A § 113-77.9(c).

³³ Pearsall, *supra* note 15.

³⁴ North Carolina Department of Environment and Natural Resources, *supra* note 6.

³⁵ North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, *Mission*, (on file with author).

³⁶ N.C. GEN. STAT. Art. 2C § 113-44.8(a).

Water Access Program.³⁷ Since Fiscal Year 1996, PARTF has contributed to the acquisition of over 25,000 acres of state park lands and approximately 2,800 acres for local parks.³⁸

An eleven-member Parks and Recreation Authority administers the PARTF,³⁹ including the allocation of funds for land acquisition.⁴⁰ PARTF-funded staff, including several biologists,⁴¹ provide support for the Parks and Recreation Authority.

Program Funding. North Carolina's deed stamp tax is the primary source of funds for the PARTF. Each county remits one-half of its proceeds from the tax to the state, which then credits 75 percent of those collected funds to PARTF. The PARTF also receives five dollars for each personalized license plate sold in North Carolina.⁴² In Fiscal Year 2004-2005, PARTF revenues totaled \$45,137,417.⁴³ Of that total, the state parks system received \$14,450,417 for land acquisition and \$14,450,417 for capital improvements, and the local government grants program received \$13,338,847.⁴⁴ About \$4.3 million was awarded to local government to acquire 450 acres of park land. Between Fiscal Years 1995 and 2004, PARTF expenditures totaled \$245,088,264.⁴⁵

Local Government Land Protection Strategies. Local governments use PARTF funds to conduct fee simple acquisition.⁴⁶

PARTF's authorizing legislation directs the Parks and Recreation Authority to allocate funds for local government grants based on "criteria patterned after the Open Project Selection Process established for the Land and Water Conservation Fund."⁴⁷ Accordingly, the Authority uses the *PARTF Scoring System for Grants* as an important factor in selecting grant recipients for both

³⁷ N.C. GEN. STAT. Art. 2C § 113-44.15(b).

³⁸ Email from Robin Capps, Grants Analyst, North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, to Ben Gerhardstein, Research Associate, Environmental Law Institute (Sept. 20, 2005 14:50:13 EST) (on file with author).

³⁹ The Governor appoints three members of the Authority, and the North Carolina General Assembly appoints the remaining eight members. North Carolina Parks and Recreation Trust Fund, *Learn more about us*, at <http://ils.unc.edu/parkproject/partfund/learn.html> (last visited Aug. 26, 2005).

⁴⁰ *Id.*

⁴¹ Email from Robin Capps, Grants Analyst, North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, to Ben Gerhardstein, Research Associate, Environmental Law Institute (Apr. 22, 2005, 16:09:00 EST) (on file with author).

⁴² North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, *North Carolina Parks and Recreation Trust Fund 2003-2004 Annual Report*, at 1 (on file with author).

⁴³ *See*: North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, *N.C. Parks and Recreation Trust Fund 2004-2005 Grant Application*, available at http://ils.unc.edu/parkproject/partfund/partf_app_04.doc. During FY 2003-2004, total PARTF revenues were \$37,601,698. Of that total, the state parks system received \$7,235,526 for land acquisition and \$16,882,895 for capital improvements while the local government grants program received \$11,131,579. North Carolina Department of Environment and Natural Resources, *supra* note 42.

⁴⁴ North Carolina counties and incorporated municipalities are eligible for PARTF local government matching grants. Local government applicants must provide 50 percent of the total cost of the project. North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, *N.C. Parks and Recreation Trust Fund 2004-2005 Grant Application*, available at http://ils.unc.edu/parkproject/partfund/partf_app_04.doc.

⁴⁵ Capps, *supra* note 38.

⁴⁶ North Carolina Department of Environment and Natural Resources, *supra* note 44, at 12.

⁴⁷ N.C. GEN. STAT. Art. 2C § 113-44.15(b)(2).

capital improvement and land acquisition projects.⁴⁸ Land acquisition criteria include: whether or not the site is a significant natural, cultural, recreational, scenic or highly-threatened resource that will be used for other purposes if not purchased immediately; and whether or not the site is an excellent (or average) natural and/or recreational resource.⁴⁹ Other criteria are organized under the following categories: public recreational facilities provided by the project, planning (including whether the project conforms to a site-specific master plan and to a Comprehensive Systemwide Parks and Recreation Plan), level of public involvement, applicant's commitment to operating and maintaining the project, and suitability of the site for the proposed project.⁵⁰ Biodiversity considerations are not specifically included among criteria.⁵¹

Division of Parks and Recreation Land Protection Strategies. DENR's Division of Parks and Recreation receives funding for state parks land acquisition from multiple sources, including the NHTF and the CWMTF, although the PARTF is its only dedicated source of funding. As directed by the State Parks Act of 1987, the NCDENR Division of Parks and Recreation protects representative examples of the state's natural diversity under five resource themes: archaeological, geological, biological, scenic, and recreational.⁵² The act specifies that the NCDENR prepare and adopt a State Parks System Plan ("Systemwide Plan") and that all state parks system additions be consistent with the plan.⁵³ NCDENR's Division of Parks and Recreation also has a conservation plan and initiative, *New Parks for a New Century*, that builds on the Systemwide Plan by identifying potential additions to the state parks system.⁵⁴

The Division of Parks and Recreation has adopted a land acquisition prioritization process that includes criteria and a scoring system for the evaluation of potential state park system unit additions.^{55,56} This site evaluation and ranking process was formalized internally with biologists, planners, rangers, and other division staff during the late 1990s. New state park units must meet four minimum criteria: statewide significance of the resource themes represented; size (sufficient acreage to protect principal resources and provide appropriate facilities with minimal impacts on those resources); absence of incompatible features such as roads, intrusive development, incompatible vistas, and air, water, and noise pollution; and sufficient access for management and public use. If a proposed site meets these minimum criteria, scoring is conducted for the following additional criteria: number of high priority resource themes represented; rarity of themes; overall threat to themes; degree of threat to resources/urgency of

⁴⁸ In addition to the PARTF scoring system, the Authority also considers population, geographic distribution of projects throughout the state, presence or absence of other funding sources, and compliance with prior grant agreements.

⁴⁹ North Carolina Department of Environment and Natural Resources, *supra* note 42, at 18-19.

⁵⁰ North Carolina Department of Environment and Natural Resources, *supra* note 44.

⁵¹ However, according to PARTF officials, local governments have become increasingly interested in acquiring land for nature-based recreation (as opposed to acquiring land for sports fields). Telephone Interview with Robin Capps, Grants Analyst, North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation (Apr. 19, 2005).

⁵² N.C. GEN. STAT. Art. 2C § 113-44.8.

⁵³ N.C. GEN. STAT. Art. 2C § 113-44.14.

⁵⁴ North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, *New Parks for a New Century*, at <http://ils.unc.edu/parkproject/explore/plan.html> (last visited Aug. 28, 2005).

⁵⁵ *Id.*

⁵⁶ The state parks system includes six types of "units:" State Parks, State Natural Areas, State Recreation Areas, State Trails, State Rivers and State Lakes.

acquisition; presence of rare and/or endangered species; interconnection with other protected areas; quality of resources and/or presence of a superlative (biggest, best example, unique, etc.); regional demand for parks system units staffed and open to the public; and suitability for providing high quality recreation.⁵⁷

The Systemwide Plan states that the “protection of biological diversity should focus on the themes which are not yet adequately represented.” Biological themes are groupings of natural community types based on similarities in environment and vegetation. The Systemwide Plan identifies thirteen biological themes (e.g. northern hardwood forests and coastal plain depression communities) as having high expansion needs.⁵⁸ The land acquisition prioritization process relies largely on biological information. The division primarily uses biological data from the NHP, but also uses data from citizen groups, academic institutions, and staff biologists.⁵⁹

Once potential sites are scored, final acquisition decisions are made through the Land Evaluation and Acquisition Program (LEAP), which sets land acquisition priorities across the state park system based on available tracts. LEAP considers threats to the site and price more strongly than the land acquisition prioritization process.⁶⁰ The General Assembly must authorize all new units added to the state parks system, but tracts can be added to existing units without further legislative authorization.⁶¹

Protection in Perpetuity. Property acquired with a PARTF local government grant must “be dedicated in perpetuity for local park and recreational purposes for the use and benefit of the general public.”⁶² Land acquired by the state can only be removed from the state park system by the General Assembly with a majority vote. No other governmental body or agency has the authority to remove land from the state park system.⁶³

PARTF does not have funding for long-term monitoring or stewardship of local park projects, but PARTF staff members inspect sites for three years after a grant has been awarded. After that, grantees must self-evaluate every five years to ensure compliance.⁶⁴

III. State Wildlife Action Plan

The North Carolina Wildlife Resources Commission led the development of the state’s wildlife action plan (formerly known as the Comprehensive Wildlife Conservation Strategy) and

⁵⁷ Telephone Interview with Carol Tingley, Chief of Planning and Natural Resources, North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation (Apr. 22, 2005).

⁵⁸ North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, *Systemwide Plan for the North Carolina State Parks System, 2000-2005* (excerpts on file with author).

⁵⁹ Tingley, *supra* note 57.

⁶⁰ *Id.* See also: North Carolina Department of Environment and Natural Resources, Division of Parks and Recreation, *N.C. State Parks System – Project Selection and Acquisition Projects* (on file with author). LEAP’s six primary objectives are: primary resource protection, elimination of inholdings, scenic resource protection, protection of water quality, land for facilities, and buffers for land management and protection. The second factor is urgency.

⁶¹ N.C. GEN. STAT. Art. 2C § 113-44.14(a).

⁶² North Carolina Department of Environment and Natural Resources, *supra* note 44, at 12.

⁶³ N.C. GEN. STAT. Art. 2C § 113-44.14(b).

⁶⁴ Capps, *supra* note 51.

collaborated with scientists, sportsmen, and other conservation partners, such as the NHP and The Nature Conservancy. The plan includes conservation strategies for the state and provides a detailed assessment of the conservation needs of specific species and habitats.⁶⁵ In August 2005, North Carolina became the first state to have its plan approved by the U.S. Fish and Wildlife Service.⁶⁶

As of November 2005, NHTF officials had not yet decided how to utilize the wildlife action plan, although staff were interested in learning how the information in the plan can inform grant evaluation processes.⁶⁷ PARTF staff do not anticipate utilizing the plan in their land protection decision-making processes.⁶⁸

IV. Summary

North Carolina's Natural Heritage Trust Fund and Parks and Recreation Trust Fund have statutory authority to protect land for biodiversity purposes. In addition, the NHTF has specific authority to prioritize lands for biodiversity conservation. PARTF's authority includes the preservation of biological resources, but does not specifically authorize prioritization of biodiversity. The NHTF is interested in utilizing North Carolina's wildlife action plan during the grant review process, but has not yet determined how that plan might be used. PARTF does not anticipate integrating the plan into their land protection prioritization processes.

⁶⁵ North Carolina Wildlife Resources Commission, *A Wildlife Action Plan for North Carolina, Introduction*, available at http://www.ncwildlife.org/pg07_WildlifeSpeciesCon/CWCSchapter1.pdf (last visited Aug. 29, 2005).

⁶⁶ North Carolina Wildlife Resources Commission, *U.S. Fish and Wildlife Service Approves N.C. Wildlife Action Plan (Aug. 12, 2005)*, available at: http://www.ncwildlife.org/news_stories/pg00_NewsRelease/pg00_aug05_4.htm.

⁶⁷ Email from Linda Pearsall, Program Director, North Carolina Department of Environment and Natural Resources, to Ben Gerhardstein, Research Associate, Environmental Law Institute (Nov. 7, 2005, 14:06:00 EST) (on file with author).

⁶⁸ Capps, *supra* note 51.