

State Specific Training Module for West Virginia

Purpose of this Module

This module will provide some general information that TSPs need to conduct conservation planning in West Virginia. This information is general in nature so the TSP may need to follow up with additional reading or training to make sure they have the knowledge, skill, licenses and certifications to conduct conservation planning in West Virginia.

Review of State Laws

West Virginia state code is available at

<https://code.wvlegislature.gov/>.

The laws in the West Virginia Code are passed by the West Virginia Legislature, which consists of the West Virginia House of Delegates and the West Virginia Senate. The members of the House of Delegates serve two-year terms, while the members of the Senate serve four-year terms. The members of each chamber are not subject to any term limits.

Review of State Laws

A proposed law is known as a bill, which can be introduced in either chamber of the West Virginia legislature. After a bill is introduced, it will be referred to one or more standing committees. These committees determine whether a bill should move forward, and they also can propose amendments to a bill. If a bill passes through the committee phase, it will return to the chamber in which it was introduced. This chamber will discuss the bill and consider any amendments suggested by a committee or by members of the chamber. Once the bill has been finalized, the original chamber will vote on whether to pass it.

Review of State Laws

If the bill is passed, it will go through the same process in the other chamber. Sometimes the second chamber will amend the bill and pass a different version of it. A bill will not reach the next stage unless the differences between these versions are resolved. Each chamber must pass identical versions of the bill.

Review of State Laws

If each chamber of the legislature passes the bill, the Governor of West Virginia will review it. The Governor may sign the bill into law, or the Governor may take no action, which means that the bill will become law. If the Governor vetoes the bill, however, it will return to the legislature. The legislature can vote to override the Governor's veto and pass the bill into law. Overriding the Governor's veto requires only a simple majority vote in each chamber of the legislature, or a two-thirds majority for appropriation bills.

Review of State Laws

West Virginia requires permits for impacts to isolated waters and wetlands. Related details are provided under the “Review of Federal Laws” section below.

West Virginia requires State Historic Preservation Office coordination and review of projects *receiving federal funding*. Further details are provided under the “Review of Federal Laws” section below.

West Virginia Engineering Law can be found at:

<https://www.wvpebd.gov/West-Virginia-Engineering-Law/West-Virginia-Engineering-Law>

West Virginia Noxious Weed Act

No person may sell, barter, expose, offer for sale or move, transport, deliver, ship or offer for shipment into or within this state any plant pest or other insects or noxious weeds in any living stage without first obtaining either a federal permit, where applicable, or a state permit from the commissioner...

<https://code.wvlegislature.gov/19-12D-7/>



Tree of Heaven: Foliage

(Photo: Chuck Barger, The University of Georgia, www.forestryimages.org)

West Virginia Noxious Weed List



- <https://casetext.com/regulation/west-virginia-administrative-code/agency-61-agriculture/title-61-legislative-rule-department-of-agriculture/series-61-14a-noxious-weeds-rule/section-61-14a-5-declaration-of-noxious-weeds>
- Surveys have shown that the following plants are a detriment to agriculture in West Virginia and are hereby declared to be noxious weeds:
 - Johnson Grass, *Sorghum halepense* (L.); Plumeless Thistle, *Carduus acanthoides* (L.); Curled Thistle *C. crispus* (L.); Musk Thistle, *C. nutans* (L.); Mile-a-minute, *Polygonum perfoliatum*; Japanese Knotweed, *P. cuspidatum*; Purple Loosestrife *Lythrum salicaria*; Tree of Heaven, *Ailanthus altissima*; Autumn Olive, *Elaeagnus umbellata* (Thunb.); Japanese Stiltgrass, *Microstegium vimineum*; Tartarian Honeysuckle, *Lonicera tartarica*; Morrow's Honeysuckle, *L. Morrowii*; Poison Hemlock *Conium maculatum*; and Kudzu, *Pueraria thunbergiana* (S and Z) Benth.
- West Virginia adopts the Federal Noxious Weed List of the Federal Noxious Weed Act [Public Law 93-629 (7 U.S.C. 2801 et seq.; 88 Stat. 2148)] as an extension of the West Virginia Noxious Weed list. The Federal Noxious Weed List (Appendix A) will be regulated by the West Virginia Noxious Weed Act.

Review of State Laws

West Virginia Stream Disturbances Permit Guidance

- <http://www.dep.wv.gov/WWE/Programs/nonptsource/streamdisturbance/Pages/default.aspx>
- <https://wvdnr.gov/lands-waters/office-of-lands-and-streams/>
- The West Virginia Conservation Agency can provide assistance with coordinating stream permits.

Review of State Laws

Logging Sediment Control Act Requirements and Other Logging Requirements

- Timbering operations must obtain or complete annual renewal of their WV Timbering License.
 - <https://wvforestry.com/best-management-practices/training-licensing-certification/>
- Loggers who will supervise operations must complete training in BMPs, First Aid, CPR, and Safety to obtain a Certified Logger's Certificate.
 - <https://wvforestry.com/water-quality/>
- Each logging job requires the following:
 - A Timbering Operation Notification Form must be filed with the WV Division of Forestry
 - A sign must be posted at the landing that meets the requirements of the WV Division of Forestry
 - A Certified Logger must be present any time logging activities are being conducted.
 - The WV Division of Forestry must be notified if logging operations permanently or temporarily stop seven days or more prior to the planned completion date.
 - Failure to follow the BMPs which leads to irreparable soil erosion or endangers life may result in the issuance of a compliance order or a shut-down order from the WV Division of Forestry.
- Other requirements
 - Access road construction must be permitted with the WV Division of Highways.
 - Sightings of endangered species should be reported to the U.S. Fish and Wildlife Service.
 - Dredging, filling or alteration of a wetland may require a permit from the U.S. Army Corps of Engineers, the WV Public Land Corporation, and/or local jurisdictions.
 - <https://wvforestry.com/laws-regulations/logging/>

Review of State/ Federal Laws Relating to Ginseng

- West Virginia Code §19-1A-3a mandates that the Division of Forestry weigh and certify all ginseng roots dug in the state. Ginseng plants must be at least 5 years old or older and have at least 3 prongs before they can be harvested. Seeds from the plant must be planted on the site of the harvest. Ginseng must be certified before leaving the boundaries of the state. Only registered dealers can certify ginseng.
- Requirements for the export of wild ginseng out of the country are established by the U.S. Fish & Wildlife Service. All ginseng plants must be at least 5 years of age and have at least 3 prongs before being harvested and therefore eligible for export.
- The West Virginia ginseng digging season runs from September 1 through November 30 of each year.
- A permit is not required to dig ginseng
- Digging of ginseng is not permitted on State Forests, State Parks, or other state-owned public lands. Permits to dig ginseng on the Monongahela National Forest may be obtained by calling (304) 636-1800. There is a fee associated with these permits.
- In order to grow ginseng on your own property, a determination must be done before planting any ginseng on your property. The determination is to make sure there is no wild ginseng in the area you are wanting to plant. Determinations are done between April 15 and June 15 of each year. After the determination has been done then you can become a Ginseng Grower and a permit will issued.

FOR MORE INFORMATION ABOUT
HARVESTING AND SELLING GINSENG, CALL
THE WEST VIRGINIA DIVISION OF FORESTRY AT
(304) 558-2788.



Review of Federal Laws

Endangered Species Act (ESA)

Section 7 of the ESA requires NRCS to coordinate with the U.S. Fish & Wildlife Service (FWS) for any conservation practices with potential to affect threatened, endangered, or candidate species or their designated critical habitat.

In West Virginia, NRCS and the FWS have developed the Interagency Coordination Tool (ICT) available at: <http://mapwv.gov/ict>. Alternatively, use FWS Information for Planning and Consultation (IPAC) tool (<https://ipac.ecosphere.fws.gov/>).

Proposed Farm Bill projects are required to utilize the ICT during the planning phase and have a clear report prior to implementing conservation practices.

You will be directed to register and create a username and password and will then be provided access by the system administrator. Any questions on this can be directed to the NRCS-WV State Biologist.

Review of Federal Laws

Clean Water Act (CWA)

- **Section 404 –**

56 conservation practices were officially exempted from CWA 404 permitting since 31 March 2014. For practices that are not exempted, *landowners and contractors are responsible for obtaining authorization* to discharge fill materials into jurisdictional waters and wetlands from the Army Corps of Engineers - Huntington District, Baltimore or Pittsburgh Districts.

- **Section 401 –**

WV Department of Environmental Protection (WVDEP) issues 401 Water Quality Certification (WQC) whenever a CWA 404 permit is needed. In addition, WVDEP also regulates isolated waters/wetlands. *Landowners and contractors are responsible for obtaining 401 WQC and any other authorizations from WVDEP.*

Review of Federal Laws

National Historic Preservation Act

- **Section 106 –**

As a federal agency providing funding for Farm Bill projects, NRCS makes determinations of effect on cultural resources during the planning phase of conservation practices and coordinates with the WV State Historic Preservation Office as necessary.

West Virginia Certifications

West Virginia Nutrient Management Certification

West Virginia has a voluntary certification program available to individuals providing guidance to farmers or others to manage manures or organic by-products.

- Currently there are no reciprocal agreements regarding nutrient management certification with other states.
- Nutrient management certificates are valid for two years. To remain certified, twelve hours of West Virginia Department of Agriculture approved continuing education is required every two years.

<https://agriculture.wv.gov/wp-content/uploads/2020/06/NutrientManagementFAQPage.pdf>

- Persons wishing to become certified nutrient management planners must first pass an exam and meet the minimum education and work experience requirements.
- *These requirements include:* A four-year degree in agriculture or natural resources and one year of nutrient management experience. Or a combination of five years of post-secondary education and/or nutrient management experience. In either case, these must be deemed acceptable by the West Virginia Department of Agriculture.
- The exam is generally given twice a year, on the first Friday of February and August. Contact the West Virginia Department of Agriculture.

West Virginia Board of Registration for Foresters

The West Virginia Board of Registration for Foresters was established by the West Virginia Legislature in 1963 to register foresters and forestry technicians in the state of West Virginia. There are five board members, who are licensed professional foresters in this state and have held their license for at least 10 years preceding appointment. Appointments to the Board are made by the Governor.

<http://www.wvlicensingboards.com/foresters/index.cfm>

Review of State FOTG Requirements

Vegetative Practices

- Mortality from deer herbivory is perhaps the greatest obstacle to retaining tree and shrub seedlings in most of West Virginia. Using protective tree tubes or planting larger diameter stock with temporary fencing deters deer browsing.
- Many West Virginia vegetative conservation practice standards address considerations for pollinators.
 - The West Virginia Pollinator Handbook can be accessed at:
<http://efotg.sc.egov.usda.gov/references/public/WV/WVPH.pdf>

Management Practices

- The West Virginia Nutrient Management (590) conservation practice standard requires that nutrient management plans be approved by a West Virginia Certified Nutrient Planner.
- Implementing practice outside of the primary nesting, fawning, etc. season of March 15 – July 15 is required in several conservation practices

Engineering Practices

- Conservation practices that specifically require engineering services in planning, design, and installation are identified in Title 450, National Handbook of Conservation Practices, as having engineering discipline leadership from the Conservation Engineering Division, and subsequently in WV FOTG Section 4, Conservation Practices Standards. Engineering for conservation practices where malfunction or failure would adversely affect public health, safety, or property is commonly regulated by the States and requires Professional Engineering services.

Review of Common NRCS Conservation Practices

- **Agronomic Conservation Practices**
 - Prescribed grazing, fencing, nutrient management, brush management, cover crops, forage and biomass planting
- **Engineering Conservation Practices**
 - Spring developments, pipelines, troughs, stream crossings, heavy use area protection, animal waste systems, irrigation, seasonal high tunnels

Review of Major NRCS Conservation Practices

- Fish/Wildlife Habitat and Ecological Restoration
 - Practices vary for managing upland, wetland, and stream habitats and for restoring declining ecological sites. For example, early-successional forests can be created with cut-back borders, forest openings, and mowing/disking. In-stream fish structures may be built with rock/log vanes, J-hooks, or mud sills. Scrub-shrub wetlands may be enhanced by altering hydrology and introducing woody plants; riparian corridors can be fenced; and high-elevation bogs can be restored by planting red spruce (*Picea rubens*) seedlings.

Review of Major NRCS Conservation Practices


- Forestry Conservation Practices
 - Common NRCS practices include pre-commercial forest stand improvement, grapevine control, livestock exclusion, riparian forest buffers, rehabilitation of existing woodland roads and treatment of woodland invasives. Other forest-based activities include wildlife-associated recreation (hunting, fishing, wildlife watching), forest-related recreation (hiking, biking, sightseeing, etc.), and the gathering and selling of specialty forest products (ginseng, Christmas trees, nurseries, mushrooms, nuts, berries, etc.). West Virginia's forests also provide millions of dollars of benefits in improved air and water quality along with improved quality of life for West Virginia residents.
 - WV NRCS has not adopted the Prescribed Burning (338) Conservation Practice Standard.

Review of Major Land Uses or Practices

- West Virginia is a geographically diverse state, including the Ohio River Valley counties along the western border with Ohio; the southern coalfield counties bordering Kentucky and Virginia; the northern panhandle, which lies in close proximity to Pittsburgh; the eastern mountain counties with elevations over 4,000 feet; and the eastern panhandle counties which lie in the Potomac River and Chesapeake Bay watershed.
- West Virginia ranks third in the nation in the percentage of its total land area covered by forests (78 percent) behind New Hampshire and Maine. The West Virginia Department of Commerce reports that forests cover approximately 12 million acres (78%) of the state's 15.4 million acres with 30 billion cubic feet of volume of live trees. They also indicate that 88% of timberland in the state is privately owned.
- The state has a considerable amount of public lands and many large private landowners, including Timber Investment Management Organizations (TIMOs), Real Estate Investment Trusts (REITs), coal companies, and forest products companies. Over 7 million acres of forest land are held by family forest owners. Certain parts of the state have experienced continued reduction in parcel sizes, sometimes in conjunction with fragmentation of the forest, as well as related development and urbanization issues. Meanwhile, other parts of the state have actually seen some combining of ownerships and a trend toward more consolidation into larger private ownerships
- The remaining acreage is predominantly grassland with row cropland being mostly concentrated in in the eastern panhandle and Ohio River Valley. Beef cattle production is prevalent with poultry mainly being produced in the ridge and valley section in the eastern part of the state.
- The southern coalfields are largely owned by private companies. Participation in NRCS programs is typically limited there.

Review of Major Land Uses or Practices

• Agricultural Products

- The wood industry generates \$3.2 billion annually.
- The total market value of agricultural products produced in WV is about \$800 million annually.
- Top crops in terms of acreage and sales are forage (hay/haylage), corn for grain, soybeans for beans, corn for silage or greenchop, and wheat for grain.
- Top livestock in terms of inventory and sales are poultry and eggs and cattle and calves.
- Broilers produce 28% of the state's cash receipts, the largest among commodities. Beef cattle and calves produce about 21% of the state's total agricultural receipts.
- Over the last 100 years, what WV livestock inventory has not closely tracked the national inventory? Hint: 



West Virginia Agricultural Statistics

- Visit the USDA's National Agricultural Statistics Service West Virginia Field Office and review the most recent agricultural statistics:
https://www.nass.usda.gov/Statistics_by_State/West_Virginia/index.php
- What is the average acreage per operation?
- How many farm operations?
- How many acres are operated?
- How many producers are <35 years old? 35 – 64? >65?



Hint:

https://www.nass.usda.gov/Quick_Stats/Ag_Overview/stateOverview.php?state=WEST%20VIRGINIA

Review of Important Fish, Wildlife, & Ecological Resource Issues

**Refer to the WVDNR State Wildlife Action Plan for information on Fish, Wildlife,
and Ecological Resources!**

<https://wvdnr.gov/state-wildlife-action-plan/>

Review of Important Fish, Wildlife, & Ecological Resource Issues

Golden-Winged Warbler



The golden-winged warbler (*Vermivora chrysoptera*) is an increasingly rare early-successional species that requires a somewhat unique habitat of sparse trees and shrubs with an herbaceous understory of grasses and forbs in either upland or wetland settings. Although the species primarily suffers from hybridization from blue-winged warblers (*Vermivora cyanoptera*), golden-winged populations are declining throughout all of their range as early-successional habitats revert to mature forests and as upland and wetland habitats are lost to human development. Work for this species is concentrated in the eastern mountainous areas of the state at elevations above 2,000 feet. Conservation practices involving any type of tree removal may result in coordination with the FWS. *The previously mentioned ICT or IPaC will guide conservation planners in developing avoidance measures and will advise when consultation with FWS is required.*

Review of Important Fish, Wildlife, & Ecological Resource Issues

Cerulean Warbler

Cerulean warblers (*Dendroica cerula*) nest and raise their young in large tracts of deciduous hardwood forests that have tall, large-diameter trees and diverse vertical structure in the forest canopy. Gaps in the forest canopy or small forest openings appear to be important.

Cerulean warblers nest in uplands, wet bottomlands, moist slopes, and mountains. Although work for this species is not yet officially happening, the greatest potential for habitat improvements are in the southern, western and eastern portions of the state. Conservation practices involving any type of tree removal may result in coordination with the FWS. *The previously mentioned ICT or IPaC will guide conservation planners in developing avoidance measures and will advise when consultation with FWS is required.*



Review of Important Fish, Wildlife, & Ecological Resource Issues

Fresh-Water Mussels

The state's streams and rivers support diverse varieties of mussels with 88 species west of the Allegheny Front and 12 to the east. Mussels filter nutrients from water and improve the quality of watersheds. In-stream conservation practices to stabilize stream banks or create fish habitat occur commonly in WV. Proposed work in many waters may require landowners and contractors to coordinate and obtain permits from state and federal regulatory agencies. Surveys for mussels may also be needed prior to construction. *The previously mentioned ICT or IPaC will guide conservation planners in developing avoidance measures and will advise when consultation with FWS is required.*

Review of Important Fish, Wildlife, & Ecological Resource Issues

Bats

White-nosed syndrome (WNS), a fatal fungus transmitted among bats while in hibernation, is decimating several bat species in eastern North America. Estimates indicate the loss of millions of bats due to WNS; this could financially impact farmers due to increased crop losses from insects. The northern long-eared bat (*Myotis septentrionalis*) and the Indiana bat (*Myotis sodalis*), both listed as endangered under the Endangered Species Act, typify the plight of bats suffering from WNS in WV. Conservation practices involving any type of tree removal will likely affect bats in some way and may result in coordination with the FWS. *The previously mentioned ICT or IPaC will guide conservation planners in developing avoidance measures and will advise when consultation with FWS is required.*

Review of Important Fish, Wildlife, & Ecological Resource Issues

Wetlands

Opportunities continue for establishing, restoring, enhancing, and preserving wetlands in WV. The EQIP program is the current tool under the federal Farm Bill that allows qualifying landowners to obtain NRCS financial and technical assistance for developing wetlands on their property. *The previously mentioned ICT or IPaC will guide conservation planners in developing some avoidance measures and will advise when consultation with FWS is required.*

Stream Restoration

Trout Unlimited and NRCS are partnering with private landowners to restore high-value cold water fisheries on private lands primarily in the eastern half of WV. Once prevalent throughout mountainous watersheds in WV, the native brook trout (*Salvelinus fontinalis*) is returning to parts of its former range through the cooperation of interested landowners, public agencies, and TU. As mentioned previously, landowners and contractors many need to coordinate with and obtain permits from state and federal regulatory agencies for in-stream work. Surveys for freshwater mussels may also be needed prior to construction. *The previously mentioned ICT or IPaC will guide conservation planners in developing some avoidance measures and will advise when consultation with FWS is required.*

Review of Important Fish, Wildlife, & Ecological Resource Issues

High-Elevation Habitat Restoration

Identified as a declining ecological communities throughout Appalachia, high elevation red spruce bogs and ridges are priority areas targeted for restoration by several public and private entities, including NRCS. Restoration of these declining areas could improve habitat for a variety of rare plant and wildlife species, like the northern flying squirrel (*Glaucomys sabrinus*). Potential restoration work for interested landowners could be available on private inholdings or private lands bordering the Monongahela National Forest in the mountainous portion of eastern WV.

Review of Important Fish, Wildlife, & Ecological Resource Issues

Traditional Game

NRCS provides landowners opportunities to manage for habitat for traditional game species, like ruffed grouse (*Bonasa umbellus*), woodcock (*Scolopax minor*), and cottontail rabbit (*Sylvilagus floridanus*) by offering technical and financial assistance through the federal Farm Bill.

Native Grass and Pollinator Restoration

Often associated with upland game management, warm season grasses are frequently sought by private landowners to enhance cool season grassland pasture systems and also make them attractive for wildlife. Commonly used warm season species include big bluestem (*Andropogon gerardii*) and Indian grass (*Sorghastrum nutans*).

Restoration of native flowering plants in WV, like butterfly weed (*Asclepias tuberosa*), are important for pollinating insects and is a priority for NRCS whenever possible.

Review of Major Land Ownership

The U.S. Department of Agriculture reports that WV has the second-highest percentage (93.0) of family- owned farms in the country. The average farm size in WV is 156 acres, while the rest of the nation averages about 441 acres per farm. Similarly, 66% of forestland in the state is non-industrial private ownership according to the USDA Forest Service.

WVDNR reports that 13.3% of WV's nearly 15.5 million acres are publicly owned. State and federal agencies managing these lands include the U.S. Forest Service, WVDNR and WV Division of Forestry, National Park Service, Army Corps of Engineers, and the FWS. Monongahela National Forest is the largest tract of government land in WV, representing roughly 920,000 acres of publicly- owned property.

Many farmers are part-time producers with outside employment.

Conservation planning on private land may include a public component, however the opportunity for private individuals to construct permanent conservation practices on public lands is limited.

Expected TSP Workflow

The State Resource Conservationist (SRC) and State Conservation Engineer (SCE), or their designee(s), are responsible for reviewing TSP samples of work for TSP certification purposes.

Subsequent TSP completed work will be reviewed by the District Conservationist (DC) at the local USDA Service Center, and possibly by specialists at the NRCS area offices or NRCS state office.

TSPs will work with the local District Conservationist to work through the conservation planning process with each customer.

- Once NRCS financial assistance contract is obligated, customer contracts with TSP for applicable services.
- TSP carries out relevant steps of the NRCS conservation planning process ***with*** the customer.
- TSP delivers completed services to the customer. Customer notifies NRCS that services are complete, or TSP may notify NRCS on the customer's behalf.
- NRCS makes payment to customer for completed services through their financial assistance contract. Contractual agreement and payment between customer and TSP is totally independent from contractual agreement and payment between NRCS and customer. Note though that customer may assign payment from NRCS to TSP.
- Landowner implements conservation plan as per plan, design, and schedule of operations.

Additional References or Training

- State Field Office Technical Guide at:
<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/>
- State Training on CNMP Development
- Pennsylvania State University Agronomy Guide

Certificate of Completion

After viewing the State Specific Training module, please print and sign the completion certificate on the following slide.

The certificate is your acknowledgement that based on the information provided in this module, you have the proper knowledge, skills and ability to conduct planning in this State.

Within your NRCS Registry profile, enter the training and upload the signed certificate to verify completion.

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STATE SPECIFIC TRAINING MODULE COMPLETION CERTIFICATE

I, _____ hereby verify I have viewed and understand the content of the *West Virginia State*
TSP Name
Specific Training Module and affirm I have the knowledge, skills, and ability to conduct conservation planning
services in this state.

TSP Signature

Date