

## **AGENDA**

### **North Carolina Land and Water Fund**

#### **Acquisition Committee Meeting**

May 4, 2021, 1:30 – 4:00 p.m.

**Due to the COVID19 pandemic, this meeting will only be available to the public by teleconference. Please contact Sydney McDaniel at [sydney.mcdaniel@ncdcr.gov](mailto:sydney.mcdaniel@ncdcr.gov) or 919-707-9121 to request a teleconference meeting invitation/call-in or instructions to attend the meeting in person.**

#### **Committee Members:**

Jason Walser (Chair), Ann Browning, Greer Cawood, Amy Grissom, John Wilson, David Womack

**1) Call to Order** (Chair – Jason Walser)

- a) Welcome
- b) Compliance with General Statute § 138A-15  
*General Statute § 138A-15 mandates that the Chair inquire as to whether any Trustee knows of any conflict of interest or the appearance of a conflict of interest with respect to matters on the agenda. If any Trustee knows of a conflict of interest or the appearance of a conflict of interest, please state so at this time.*
- c) Revisions, Additions, and Adoption of the Agenda

**2) Public Comments** (Chair – Jason Walser)

The Public Is Invited to Make Comments to the Committee – (Three Minutes per Person)

**3) Executive Director's Update** (Walter Clark)

**4) Enforcement of Conservation Agreements** (Marissa Hartzler)

Staff will present a draft enforcement policy as directed at the March meeting.

**5) Stewardship Endowment for 2020-012 Conserving Carolina, Green River Game Land Addition Phase 2**

(Nancy Guthrie)

Staff will request the committee recommend adding stewardship endowment funds to this budget.

**6) 2020 and 2021 Grant Cycle Update** (Nancy Guthrie)

Staff will give an update on the 2020 provisional list and review status of the 2021 applications.

**7) Adjourn**

**Action Item**

**Staff member(s): Marissa Hartzler**

---

**Agenda Item 4) Enforcement of Conservation Agreements**

At the April 13, 2021 Acquisition Committee meeting, staff presented a draft enforcement policy and the Committee requested minor edits. The included updated draft will be presented for further consideration.

**Committee action needed**

Review the updated policy draft and consider recommending to the full Board for adoption.

## Conservation Agreement Enforcement Policy (STW-007)

**Background:** On behalf of the State, the North Carolina Land and Water Fund (“NCLWF”) makes substantial grants of State funds and acquires conservation agreements from landowners to protect the conservation values of lands and waters. These conservation agreements include conservation easements and other agreements. NCLWF has the perpetual duty to enforce these conservation agreements to protect the conservation values of the lands and waters covered by these agreements and to protect the investment of State funds. When the terms of a conservation agreement are violated, NCLWF has the objective to address the violations in an effective, timely, prudent, and consistent manner.

The purpose of this policy is to define roles and responsibilities, classify violations, establish priorities, identify appropriate corrective actions, and establish reporting and notification requirements.

### Policy:

#### 1. Roles and Responsibilities

Contracted conservation agreement monitors, NCLWF Staff, the Board of Trustees, Department legal counsel, the State Property Office, and the Attorney General’s Office all have roles in the enforcement of conservation agreements acquired by the State:

- a. In accordance with this Enforcement Policy, Staff will develop more detailed procedures for the documentation, evaluation, and resolution of potential and confirmed violations of conservation agreements.
- b. Upon identification of a potential violation, Staff will, in cooperation with the contracted monitor, document the facts of the potential violation including aggravating and mitigating factors. Based upon its research and documentation, Staff will determine whether a violation has in fact occurred, and if so, the level of the violation.
- c. When a violation is confirmed, Staff will develop strategies for remedying the violation and, with assistance from the contracted monitor and/or Department legal counsel, seek resolution with the landowner as the first line of response to the violation.
- d. For ongoing, repeated, major, or high-profile violations, including those that may require litigation, Staff will notify the Chair of the Board of the violation and the corrective action proposed by Staff. The Chair may authorize staff to continue handling the violation or refer consideration of the violation to the Board through a regular or special meeting to determine if litigation is required.
- e. If the Chair refers a violation to the Board as provided above, the Board may engage the State Property Office and the Attorney General’s Office to review the violation and to proceed with litigation or other legal remedies.
- f. ~~If a violation rises to the level of an emergency,~~ If Staff learns of a threatened violation that rises to the level of an emergency, Staff will consult with the Chair of the Board, Department legal counsel, the State Property Office, and the Attorney General’s Office, and with the Chair’s authorization, take immediate action up to and including seeking a temporary restraining order and a preliminary injunction to prevent the damage that would otherwise occur from the emergency. An emergency is an imminent threat of a

moderate or major violation that would cause immediate and irreparable harm to the conservation values protected by a NCLWF conservation agreement unless action is immediately taken.

## 2. Violation Classification

Violations vary in scope, impact, and permanence. The following categories are a general guide to the levels of severity of violations, although in practice, the specifics of each situation will determine the classification of the violation:

- a. Procedural violations – violations in which the landowner fails to comply with a procedural requirement of a conservation agreement, including but not limited to failures to give notice to or seek approval from NCLWF or the State and failures to refer to the conservation agreement in subsequent deeds or instruments conveying an interest in the property subject to the conservation agreement.
- b. Minor violations – violations that, because of limited scope, impact, and/or duration, have a negligible impact on a conservation agreement’s purposes and conservation values.
- c. Moderate violations – violations that have a measurable impact on a conservation agreement’s purposes or conservation values, but restoration to prior condition may still be possible.
- d. Major violations – violations that have or may have serious, potentially irreversible impacts on a conservation agreement’s purposes or conservation values.

## 3. Corrective Actions

When determining the necessary corrective actions for confirmed violations, NCLWF will consider resolutions and remedies tailored to the classification of the violation, the violation’s impact to the relevant conservation purposes and values, the intent of the original grant award, and aggravating and mitigating factors. NCLWF may seek one or more corrective actions to address violations, including but not limited to the following:

- a. Negotiated Cooperative Resolution - If an activity has impacted the conservation values and must be stopped, NCLWF may negotiate a cooperative resolution with the landowner, such as restoration of prior condition, recordation of corrective instruments, or prevention of third-party trespass.
- b. Update of Plan - If the activity does not impact the conservation values, and the conservation agreement references a Memorandum of Understanding, Recreational Plan, or other Management Plan, NCLWF and the landowner may update the plan following any requirements put forth in the conservation agreement.
- c. Letter of Interpretation - If a landowner asserts that it is unclear that the relevant conservation agreement restricts an activity in question, NCLWF may issue a letter of interpretation for clarification.
- d. Amendment - Subject to all applicable law, including but not limited to the Conservation and Historic Preservation Agreements Act, and NCLWF’s STW-001 Conservation Agreement Amendment Policy, a landowner may seek amendment of a conservation agreement for an activity that does not have a significant impact on conservation values

or for which impacts will be mitigated and does not result in impermissible private benefit.

- e. Litigation - For violations that cannot be resolved by other non-litigation means after such means have been attempted by Staff, NCLWF may seek litigation or other legal remedy via the State Property Office and Attorney General's Office.

#### 4. **Enforcement Priorities**

~~NCLWF recognizes that it does not have unlimited resources to address violations of conservation agreements, and consequently, violations~~ Violations must will be prioritized to maximize protection of the purposes and conservation values covered by conservation agreements, the funds invested in them, and the program's integrity and goodwill. If the violation is ongoing, repeated, or results in impermissible private benefit, these circumstances will be considered in prioritizing the violation for enforcement action. Non-enforcement with respect to a violation shall not constitute a waiver of the State's right to enforce against the violation or any other violation in the future.

#### 5. **Reporting and Notification**

NCLWF staff will keep the Board apprised of violations:

- a. Staff will notify the Chair of the Board of any major violation promptly after the violation is confirmed and of any high-profile or ongoing or repeated violations that may require legal remedy.
- b. If an emergency action was taken, such action will be brought to the attention of the Board of Trustees as soon as practicable.
- c. Staff will report to Board annually on the numbers, classification, and status of all violations.

**Action Item****Staff member: Nancy Guthrie**

---

**Agenda Item 5) Add Stewardship Endowment to 2020-012 Conserving Carolina, Green River Game Land Addition Phase 2****Background**

2020-012 Conserving Carolina - Green River Game Land Addition Ph2 was added to the provisional list at the 2020 funding meeting. It has now been funded.

The award is \$305,944 out of a total project cost of \$823,644.

This project has three separate blocks of land, each with a different conservation strategy, which are detailed below. Acquisition #3, highlighted below, is the subject of this agenda item.

**Scope of Work**

Before the contract expiration date, Conserving Carolina will complete the following acquisitions:

1. Purchase approximately 165 acres and transfer the property to the State to be managed as part of Green River Game Land; and
2. purchase a 1-acre property containing a historic structure and record declaration of restrictions on property; manage the property in perpetuity; and
3. accept the donation of a conservation easement on approximately 18 acres and assign the easement to the State.

**Issue**

The land subject to #3 above will be encumbered by a conservation easement that will be assigned to the State. Because this easement will be assigned to the State, a stewardship endowment is needed. During the 2020 application review, there were several conversations and changes to the application. When a revised budget was submitted, the stewardship endowment was omitted.

Staff did not realize the budget approved at the 2020 funding meeting did not include the stewardship endowment until the contract draft was written.

At the request of staff, Conserving Carolina has recently completed NCLWF's stewardship endowment worksheet for this property and calculated that \$7,944 is needed for the endowment.

Staff would like to have \$7,944 added to the award, bringing the total award to \$313,888. The additional funds will come from available returned funds and license plate revenue.

Any additional funds to any project must be approved by the Board.

Additional notes:

- No changes are needed for Acquisition 1 or 2.
- The addition of the stewardship endowment to the budget will not change the application score.

**Staff recommendation**

Staff recommends adding \$7,944 to project 2020-012 CC - Green River Game Land Addition Phase 2 for a stewardship endowment. This will make the total award up to \$313,888.

**Committee action needed**

Approve or amend the staff recommendation and make a recommendation to the Board.

**Information Item**

**Staff member: Nancy Guthrie**

---

**Agenda Item 6) 2020 and 2021 Grant Cycle Update**

Staff will give an update on the 2020 provisional list and review status of the 2021 applications.

**No committee action needed.**