

# North Carolina Land and Water Fund Board Guidelines and Practices



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## Contents

Contents..... 3

**PURPOSE .....5**

**BACKGROUND .....5**

**2020 RENAMING.....5**

**AUTHORITY.....6**

**Board of Trustees Guidelines and Practices.....12**

    Conflict of Interest..... 12

    Legal Consultation ..... 12

    Grant Funding Allocation..... 12

    Internal Operating Procedures (“By-Laws”) (BOT-001)..... 13

**Public Notifications .....17**

    Regular Meetings..... 17

    Special Meetings..... 17

    Notifications by Email..... 17

    Website..... 17

**Multiple Program Guidelines and Practices.....18**

    Administrative Costs and Caps for Grant Contracts (MPP-001)..... 19

    Project Change Requests and Delegation of Decision Authority (MPP-002) ..... 20

    Use of Funds for Acquisition of Real Property Interest (MPP-003)..... 22

    Use of Eminent Domain (MPP-004)..... 24

    Guidelines Establishing Minimum Criteria Under G.S. § 143B-135.242 for Approval of Grants for Projects (MPP-005)..... 26

**Acquisition Program Guidelines and Practices.....29**

    Appraisal Guideline (ACQ-001)..... 30

    Purchase and Removal of Structures (ACQ-002)..... 31

~~Transaction Costs for State Agencies (ACQ-003)~~ *Repealed December 5, 2023*..... 32

    Income Generation and Mitigation Activities within the NCLWF Conservation Agreement Areas (ACQ-004) ..... 33

    State Property Office (SPO) Delegation (ACQ-005) ..... 35

    Construction of Natural Surface Trails (ACQ-006)..... 40

    Property Management Costs (ACQ-007)..... 43

    Reimbursement of Transaction Costs when a Project Fails to Close (ACQ-008)..... 44

**Restoration Program Guidelines and Practices.....45**

    Construction Bids and Award Reductions (RES-001)..... 46



Construction Contingency Funds (RES-002) .....47

Operation & Maintenance Plans for Stormwater Projects (RES-003).....48

Option Agreements for Restoration Projects (RES-004) .....49

Agricultural Best Management Practices Resolution (RES-005) .....50

Resolution Clarifying the Role of the NCLWF in Mitigation Projects (RES-006) .....52

Guidelines and Practices to Allow Term Conservation Easements on Restoration Projects with In- Stream Structures (RES-007).....54

Guidelines and Practices to Allow Award of Funding for Stewardship of Restoration Easements (RES-008) .....57

**Donation Mini-Grant Program Guidelines And Practices .....58**

    Donation Mini-Grant Program Procedures and Requirements (DMG-001).....59

    Donation Mini-Grant Program Administrative Approval (DMG-002) .....61

**Stewardship Program Guidelines and Practices.....62**

    Conservation Agreement Amendment Guidelines and Practices (STW-001) .....63

    Stewardship Endowment Funds Use (STW-002) .....68

    Board Resolution to Establish Endowment (STW-003) .....69

    Board Resolution to Invest Endowment (STW-004).....70

    NC Conservation Easement Endowment Fund Deposit Agreement (STW-005) .....72

    Retired Principal Guidelines and Practices (STW-006) .....78

    Conservation Agreement Enforcement (STW-007).....79

    Third-Party Right of Enforcement (STW-008).....82



## PURPOSE

These guidelines and practices are intended to serve as general guidance and reference material for all grant applicants and recipients, as well as those who are engaged in the administrative, financial management and stewardship responsibilities of the North Carolina Land and Water Fund. Guidelines and Practices in this document have been adopted by the North Carolina Land and Water Fund (NCLWF) Board of Trustees.

NCLWF application forms for grants, grant evaluation guidelines, enabling legislation, lists of the board of trustees, staff directory, news releases, and other reports and documents are available at [nclwf.nc.gov](http://nclwf.nc.gov).

## BACKGROUND

The North Carolina Land and Water Fund (NCLWF) was established by the General Assembly in 1996 (Article 2; Part 41 of the North Carolina General Statutes). The Fund provides grant assistance to conservation nonprofits, local governments and State agencies for the protection of natural, cultural and historic resources in North Carolina.

The NCLWF funds projects that (1) enhance or restore degraded waters, (2) protect unpolluted waters, (3) contribute toward a network of riparian buffers and greenways for environmental, educational, and recreational benefits, (4) provide buffers around military bases to protect the military mission, (5) acquire land that represents the ecological diversity of North Carolina, and (6) acquire land that contributes to the development of a balanced State program of historic properties.

The NCLWF is a division in the Department of Natural and Cultural Resources (DNCR.) A nine-member board of trustees establishes criteria, allocates funds and approves grants, and establishes policies. Five board members are appointed by the Governor; two by the General Assembly upon the recommendation of the President Pro Tempore of the Senate; and two by the General Assembly upon the recommendation of the Speaker of the House.

## 2020 RENAMING

In 2019, per Senate Bill 381, "The Clean Water Management Trust Fund shall also be known as the 'Land and Water Fund.'" In September 2020, the NCLWF transitioned to the new name.

All references to the Clean Water Management Trust Fund (CWMTF) have been converted to the N.C. Land and Water Fund (NCLWF), except for instances inside quotes or inside of guidelines stated as quoting legislation. Instances of Clean Water Management Trust Fund (CWMTF) are applied without limitation to the N.C. Land and Water Fund (NCLWF) and vice versa. Functionally, there is no distinction between the two names for the purposes of applying the Guidelines and Practices laid out herein.



## AUTHORITY

Part 41 of Article 2 of Chapter 143B of the North Carolina General Statutes reads:

### **§ 143B-135.230. Purpose.**

(a) It is the intent of the General Assembly to support and accelerate the State's programs of land conservation and protection and farmland and open space preservation and coordination to find means to assure and increase funding for these programs, to support the long-term management of conservation lands acquired by the State, and to improve the coordination, efficiency, and implementation of the various State and local land protection programs operating in North Carolina.

(b) It is the further intent of the General Assembly that moneys from the Fund created under this Part shall be used to help finance projects that enhance or restore degraded surface waters; protect and conserve surface waters, including drinking supplies, and contribute toward a network of riparian buffers and greenways for environmental, educational, and recreational benefits; provide buffers around military bases to protect the military mission; acquire land that represents the ecological diversity of North Carolina; and acquire land that contributes to the development of a balanced State program of historic properties.

(c) It is the further intent of the General Assembly that the State's lands should be protected in a manner that minimizes any adverse impacts on the ability of local governments to carry out their broad mandates. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2003-340, s. 1.3; 2007-549, s. 1; 2011-374, s. 2.1; 2014-100, s. 14.8(a); 2015-241, s. 14.30(k1); 2020-78, s. 8.4(a), (b); 2023-70, s. 9(c).)

### **§ 143B-135.232. Definitions.**

The following definitions apply in this Part:

- (1) Repealed by Session Laws 2019-32, s. 1(a), effective July 1, 2019.
- (2) Fund. - The North Carolina Land and Water Fund created pursuant to this Part.
- (3) Land. - Real property and any interest in, easement in, or restriction on real property.
- (4) Local government unit. - Defined in G.S. 159G-20.
- (5) Trustees. - The trustees of the North Carolina Land and Water Fund. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2003-340, s. 1.3; 2005-454, s. 4; 2006-252, s. 2.13; 2014-100, s. 14.8(b); 2015-241, s. 14.30(k1), (r1); 2019-32, s. 1(a); 2023-70, s. 9(e).)

### **§ 143B-135.234. North Carolina Land and Water Fund.**

(a) Fund Established. - The North Carolina Land and Water Fund is established as a special revenue fund to be administered by the Department of Natural and Cultural Resources. The North Carolina Land and Water Fund shall also be known by its original name, the Clean Water Management Trust Fund. The Fund receives revenue from the following sources and may receive revenue from other sources:

- (1) Annual appropriations.
- (2) Special registration plates under G.S. 20-81.12.
- (3) Other special registration plates under G.S. 20-79.7.
- (4) Hazard mitigation funds from the Federal Emergency Management Agency and other agencies.

(b) Fund Earnings, Assets, and Balances. - The State Treasurer shall hold the Fund separate and apart from all other moneys, funds, and accounts. Any balance remaining in the Fund at the end of any fiscal year shall



be carried forward in the Fund for the next succeeding fiscal year. Payments from the Fund shall be made on the warrant of the Chair of the Board of Trustees.

(c) Fund Purposes. - Moneys from the Fund are appropriated annually to finance projects to clean up or prevent surface water pollution and for land preservation in accordance with this Part. Revenue in the Fund may be used for any of the following purposes:

- (1) To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses.
- (2) To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and enhancing drinking water supplies, including the development of water supply reservoirs.
- (3) To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality.
- (4) To restore previously degraded lands to reestablish their ability to protect water quality.
- (5) To facilitate planning that targets reductions in surface water pollution.
- (6) To finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State's waterways, to improve water quality, and to research alternative solutions to the State's water quality problems.
- (7) To prevent encroachment, provide buffers, and preserve natural habitats around military installations or military training areas, or for State matching funds of federal initiatives that provide funds to prevent encroachment, provide buffers, and preserve natural habitats around military installations or military training areas.
- (8) To acquire 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.
- (9) To acquire land that contributes to the development of a balanced State program of historic properties.
- (10), (11) Repealed by Session Laws 2015-241, s. 14.4, effective July 1, 2015.
- (12) To protect and restore floodplains and wetlands for the purpose of storing water, reducing flooding, improving water quality, providing wildlife and aquatic habitat, and providing recreational opportunities.

(d) Repealed by Session Laws 2015-241, s. 14.4, effective July 1, 2015.

(e) Administrative Expenses. - Of the funds appropriated to the Fund, the Trustees may use no more than three percent (3%) for operating expenses associated with programs and activities authorized by this Part. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2001-424, s. 32.17; 2003-340, s. 1.3; 2004-179, s. 4.4; 2005-454, s. 5; 2007-549, s. 2; 2011-145, s. 13.26(b); 2011-374, s. 2.2; 2013-360, s. 14.3(d); 2014-100, ss. 14.13A(b), 14.21(b); 2015-241, ss. 14.4, 14.30(k1), (r1), (w); 2017-197, s. 4.12; 2019-32, s. 1(a); 2020-69, s. 5.1; 2023-70, s. 9(e); 2023-134, s. 14.8.)

#### **§ 143B-135.236. North Carolina Conservation Easement Endowment Fund.**

(a) The North Carolina Conservation Easement Endowment Fund is established as a special fund in the Office of the State Treasurer. The principal of the Endowment Fund shall consist of a portion of grant funds transferred by the Trustees to the Endowment Fund from the North Carolina Land and Water Fund for stewardship activities related to projects for conservation easements funded from the North Carolina Land



and Water Fund. The principal of the Endowment Fund may also consist of any proceeds of any gifts, grants, or contributions to the State that are specifically designated for inclusion in the Endowment Fund and any investment income that is not used in accordance with subsection (b) of this section. The State Treasurer shall hold the Endowment Fund separate and apart from all other moneys, funds, and accounts. The State Treasurer shall invest the assets of the Endowment Fund in accordance with the provisions of G.S. 147-69.2 and G.S. 147-69.3. The State Treasurer shall disburse the endowment investment income only upon the written direction of the Chair of the Board of Trustees. No expenditure or disbursement shall be made from the principal of the Endowment Fund.

(b) The Trustees may authorize the disbursement of the endowment investment income only for activities related to stewardship of conservation easements owned by the State. (2008-107, s. 12.9(a); 2015-241, s. 14.30(k1); 2023-70, s. 9(e).)

**§ 143B-135.238. Grant requirements.**

(a) Eligible Applicants. - Any of the following are eligible to apply for a grant from the Fund for the purpose of protecting and enhancing water quality:

- (1) A State agency.
- (2) A local government unit.
- (3) A nonprofit corporation whose primary purpose is the conservation, preservation, or restoration of our State's cultural, environmental, or natural resources.

(b) Criteria. - The criteria developed by the Trustees under G.S. 143B-135.242 apply to grants made under this Part.

(c) Matching Requirement. - The Board of Trustees shall establish matching requirements for grants awarded under this Part. This requirement may be satisfied by the donation of land to a public or private nonprofit conservation organization as approved by the Board of Trustees. The Board of Trustees may also waive the requirement to match a grant pursuant to guidelines adopted by the Board of Trustees.

(d) Restriction. - No grant shall be awarded under this Part for any of the following purposes:

- (1) To satisfy compensatory mitigation requirements under 33 USC § 1344 or G.S. 143-214.11.
- (2) To any project receiving State funds authorized by G.S. 143-215.71 for the nonfederal share of a grant under the Environmental Quality Incentives Program.

(e) Withdrawal. - An award of a grant under this Part which will require a construction contract is withdrawn if the grant recipient fails to enter into a construction contract for the project within one year after the date of execution of the grant contract, unless the Trustees find that the applicant has good cause for the failure. If the Trustees find good cause for a recipient's failure, the Trustees must set a date by which the recipient must take action or forfeit the grant. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2003-340, s. 1.3; 2005-454, s. 6; 2006-178, s. 1; 2007-185, s. 1; 2014-100, s. 14.8(c); 2015-241, s. 14.30(k1), (r1); 2020-18, s. 12(b); 2023-70, s. 8.)

**§ 143B-135.240. North Carolina Land and Water Fund: Board of Trustees established; membership qualifications; vacancies; meetings and meeting facilities.**

(a) Board of Trustees Established. - There is established the North Carolina Land and Water Fund Board of Trustees. The North Carolina Land and Water Fund Board of Trustees shall be administratively located within the Department of Natural and Cultural Resources.

(b) Membership. - The North Carolina Land and Water Fund Board of Trustees shall be composed of nine members appointed to three-year terms as follows:

- (1) Two members appointed by the Governor to terms that expire on July 1 of years that precede by





one year those years that are evenly divisible by three.

(2) Two members appointed by the Governor to terms that expire on July 1 of years that follow by one year those years that are evenly divisible by three.

(3) One member appointed by the Governor to a term that expires on July 1 of years that are evenly divisible by three.

(4) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of years that precede by one year those years that are evenly divisible by three.

(5) Repealed by Session Laws 2019-32, s. 1(a), effective July 1, 2019.

(6) One member appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate to a term that expires on July 1 of years that are evenly divisible by three.

(7) Repealed by Session Laws 2019-32, s. 1(a), effective July 1, 2019.

(8) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of years that follow by one year those years that are evenly divisible by three.

(9) One member appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives to a term that expires on July 1 of years that are evenly divisible by three.

The initial terms of members appointed pursuant to subdivisions (2) and (8) of this subsection shall expire July 1, 2020. The initial terms of members appointed pursuant to subdivisions (1) and (4) of this subsection shall expire July 1, 2021. The initial terms of members appointed pursuant to subdivisions (3), (6), and (9) of this subsection shall expire July 1, 2022.

(c) Qualifications. - The office of Trustee is declared to be an office that may be held concurrently with any other executive or appointive office, under the authority of Article VI, Section 9, of the North Carolina Constitution. When appointing members of the Authority, the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives shall give consideration to adequate representation from the various regions of the State and shall give consideration to the appointment of members who are knowledgeable in any of the following areas:

- (1) Acquisition and management of natural areas.
- (2) Conservation and restoration of water quality.
- (3) Wildlife and fisheries habitats and resources.
- (4) Environmental management.
- (5) Historic preservation.

(d) Limitation on Length of Service. - No member of the Board of Trustees shall serve more than two consecutive three-year terms or a total of 10 years.

(e) Chair. - The Governor shall appoint one member to serve as Chair of the Board of Trustees.

(e1) Removal. - Members of the Board of Trustees may be removed pursuant to G.S. 143B-16.

(f) Vacancies. - An appointment to fill a vacancy on the Board of Trustees created by the resignation, removal, disability, or death of a member shall be for the balance of the unexpired term. Vacancies in appointments made by the General Assembly shall be filled as provided in G.S. 120-122.

(g) Frequency of Meetings. - The Board of Trustees shall meet at least twice each year and may hold special meetings at the call of the Chair or a majority of the members.

(h) Quorum. - A majority of the membership of the Board of Trustees constitutes a quorum for the transaction of business.

(i) Per Diem and Expenses. - Each member of the Board of Trustees shall receive per diem and necessary



travel and subsistence expenses in accordance with the provisions of G.S. 120-3.1, 138-5, and 138-6, as applicable. Per diem, subsistence, and travel expenses of the Trustees shall be paid from the Fund. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 1997-443, s. 11A.119(a); 2001-474, s. 10; 2003-340, s. 1.3; 2003-422, s. 1; 2006-178, s. 2; 2013-360, s. 14.3(e); 2014-100, s. 14.8(d); 2015-241, s. 14.30(k1), (r1), (w); 2019-32, s. 1(a); 2023-70, s. 9(e).)

**§ 143B-135.242. North Carolina Land and Water Fund Board of Trustees: powers and duties.**

(a) Allocate Grant Funds. - The Trustees shall allocate moneys from the Fund as grants. A grant may be awarded only for a project or activity that satisfies the criteria and furthers the purposes of this Part.

(b) Develop Grant Criteria. - The Trustees shall develop criteria for awarding grants under this Part. The criteria developed shall include consideration of the following:

- (1) The significant enhancement and conservation of water quality in the State.
- (2) The objectives of the various basinwide management plans for the State's river basins and watersheds.
- (2a) The objectives of basinwide integrated water management plans developed and adopted at the regional level.
- (3) The promotion of regional integrated ecological networks insofar as they affect water quality.
- (4) The specific areas targeted as being environmentally sensitive.
- (5) The geographic distribution of funds as appropriate.
- (6) The preservation of water resources with significant recreational or economic value and uses.
- (7) The development of a network of riparian buffer-greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses.
- (8) Water supply availability and the public's need for resources adequate to meet demand for essential water uses. Criteria developed pursuant to this subdivision may include the value of preserving capacity by preventing sedimentation and nutrient pollution.
- (9) The protection or preservation of land with outstanding natural or cultural heritage values.
- (10) The protection or preservation of land that contains a relatively undisturbed and outstanding example of a native North Carolina ecological community that is now uncommon; contains a major river or tributary, watershed, wetland, significant littoral, estuarine, or aquatic site, or important geologic feature; or represents a type of landscape, natural feature, or natural area that is not currently in the State's inventory of parks and natural areas.
- (11) The protection or preservation of a site or structure that is of such historical significance as to be essential to the development of a balanced State program of historic properties.
- (12) The rate and likelihood of land-use change and development, where such data is available.
- (13) Priority shall be given to projects that are part of a comprehensive, long-term land-use plan by a State agency, local government unit, or a nonprofit corporation whose primary purpose is the conservation, preservation, or restoration of the State's cultural, environmental, or natural resources.

(c) Develop Additional Guidelines. - The Trustees may develop guidelines in addition to the grant criteria consistent with and as necessary to implement this Part.

(d) Acquisition of Land. - The Trustees may acquire land by purchase, negotiation, gift, or devise. Any acquisition of land by the Trustees must be reviewed and approved by the Council of State, unless the Council of State delegates approval authority, and deeds for land in fee simple absolute are subject to approval of the Attorney General before the acquisition can become effective. In determining whether to acquire land as permitted by this Part, the Trustees shall consider whether the acquisition furthers the



purposes of this Part. Nothing in this section shall allow the Trustees to acquire land under the right of eminent domain.

(e) Exchange of Land. - The Trustees may exchange any land they acquire in carrying out the powers conferred on the Trustees by this Part.

(f) Land Management. - The Trustees may designate managers or managing agencies of the lands acquired under this Part.

(g) Rule-making Authority. - The Trustees may adopt rules to implement this Part. Chapter 150B of the General Statutes applies to the adoption of rules by the Trustees. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a), (c); 1999-237, s. 15.11; 2003-340, s. 1.3; 2004-179, s. 4.5; 2011-374, s. 2.4; 2013-360, s. 14.3(f); 2013-414, s. 58(b); 2014-3, s. 14.14(f); 2014-100, s. 14.8(e); 2015-241, s. 14.30(k1), (r1); 2019-32, s. 1(a); 2023-70, ss. 9(e), 10.)

**§ 143B-135.244. North Carolina Land and Water Fund: reporting requirement.**

The Chair of the Board of Trustees shall report no later than December 1 each year to the Joint Legislative Oversight Committee on Agriculture and Natural and Economic Resources, the Environmental Review Commission, the Subcommittees of the House of Representatives and Senate Appropriations Committees with jurisdiction over natural and economic resources, and the Fiscal Research Division of the General Assembly regarding the implementation of this Part. The report shall include a list of the projects awarded grants from the Fund for the previous 12-month period. The list shall include for each project a description of the project, the amount of the grant awarded for the project, and the total cost of the project. For projects funded for the purpose set forth in G.S. 143B-135.234(c)(12), the report shall also include the amount of flood storage capacity enhanced or restored for each project. (1997-443, s. 7.10; 2002-148, s. 3; 2003-340, s. 1.3; 2015-241, s. 14.30(k1), (r1); 2017-57, s. 14.1(dd); 2021-180, s. 5.9(r); 2023-70, s. 9(e).)

**§ 143B-135.246. North Carolina Land and Water Fund: Executive Director and staff.**

The Secretary of Natural and Cultural Resources shall select and appoint a competent person in accordance with this section as Executive Director of the North Carolina Land and Water Fund Board of Trustees. The Executive Director shall be charged with the supervision of all activities under the jurisdiction of the Trustees and shall serve as the chief administrative officer of the Trustees. Subject to the approval of the Secretary of Natural and Cultural Resources, the Executive Director may employ such clerical and other assistants as may be deemed necessary.

The person selected as Executive Director shall have had training and experience in conservation, protection, and management of surface water resources. The salary of the Executive Director shall be fixed by the Secretary of Natural and Cultural Resources, and the Executive Director shall be allowed travel and subsistence expenses in accordance with G.S. 138-6. The Executive Director's salary and expenses shall be paid from the Fund. The term of office of the Executive Director shall be at the pleasure of the Secretary of Natural and Cultural Resources. (1996, 2nd Ex. Sess., c. 18, s. 27.6(a); 2001-424, s. 32.16(b); 2003-340, s. 1.3; 2013-360, s. 14.3(g); 2013-382, s. 9.1(c); 2015-241, s. 14.30(k1), (r1); 2019-32, s. 1(a); 2023-70, s. 9(e).)

**§ 143B-135.248. Repealed by Session Laws 2019-32, s. 1(a), effective July 1, 2019.**



## Board of Trustees Guidelines and Practices

### Conflict of Interest

The members of the Board of Trustees are covered by G.S. § 138A. State Government Ethics Act.

G.S. § 138A-15 mandates that the Chair inquire at each meeting 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, they are required to state so for the public record.

### Legal Consultation

An attorney from DNCR is assigned to NCLWF to advise board members and staff on any parliamentary procedures during board meetings, provide legal opinions concerning NCLWF statute, and represent NCLWF on any legal matters affecting the NCLWF.

### Grant Funding Allocation

Funds for NCLWF are allocated by the General Assembly in the State budget. The NCLWF Board of Trustees sets the allocation of funds among the different purposes of NCLWF for grant awards. Funding allocation is typically set on an annual basis.



**Board of Trustees Guidelines and Practices:**

Internal Operating Procedures (“By-Laws”) (BOT-001)

**Background:** The purpose of Internal Operating Procedures is to establish a consistent, uniform method for conducting meetings of the Board of Trustees of the N.C. Land and Water Fund (hereinafter “NCLWF”).

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**North Carolina Land and Water Fund By-Laws**

**Article I – Purpose**

The purpose of Internal Operating Procedures is to establish a consistent, uniform method for conducting meetings of the Board of Trustees of the North Carolina Land and Water Fund (hereinafter “NCLWF”).

**Article II – Authority**

The NCLWF operates under the authority of Part 41 of Article 2 of Chapter 143B of the North Carolina General Statutes.

**Article III - Meetings**

**Section 1: Open Meetings Law.** All meetings of the NCLWF, its standing committees, special committees, advisory committees, ad-hoc committees, and workgroups shall be conducted in accordance with the North Carolina Open Meetings Law as set forth in G.S. § 143-318.9 *et seq.* (hereinafter Open Meetings Law). Meetings of the Commission and its committees shall be open to the public; provided however, that closed sessions may be held only to the extent allowed by G.S. § 143-318.11.

**Section 2: Schedule of Regular Meetings:** Prior to the first meeting of each calendar year, the NCLWF shall approve a schedule of meetings for the NCLWF and its standing committees for the next calendar year. The approved schedule of meetings shall be filed with the Secretary of State. If a change in schedule is required, notice shall be filed with the Secretary of State at least 7 days in advance of the first meeting held pursuant to the revised schedule.

**Section 3: Special Meetings.** The Chair of the NCLWF or a majority of members of the NCLWF may call a special meeting by providing written notice stating the time and place of the meeting and the subjects to be considered at the meeting. Likewise, the Chair of any of the NCLWF’s committees or workgroups may call a special meeting by providing written notice stating the time and place of the meeting and the subjects to be considered at the meeting. The person or persons who call the meeting shall cause the notice to be delivered to the Chair and all other Trustees of the NCLWF by US Mail or email at least 48 hours before the meeting and shall cause a copy of the notice to be posted in the administrative offices



of the NCLWF and/or on its website at least 48 hours before the meeting as required by G.S. § 143-318.12. Only those items of business specified in the notice may be transacted at a special meeting.

**Section 4: Emergency Meetings.** If a meeting is called to deal with an emergency, the person or persons who call an emergency meeting shall take reasonable action to inform the public and other trustees as required by G.S. § 143-318.12. Only business connected with the emergency may be discussed at the meeting. For purposes of this section, an "emergency meeting" is one called because of generally unexpected circumstances that require immediate consideration by the public body.

#### Article IV – Agenda

**Section 1: Preparing the Agenda.** The Executive Director, in consultation with the Chair, shall prepare the agenda for each meeting. A request to have an item placed on the agenda for a meeting should be provided to the Executive Director no later than 5:00 p.m. fourteen days prior to the meeting.

**Section 2: Order of Business.** The Chair will set the order of business for each meeting. The following items are those usually included in the agenda:

- a. Call to Order
- b. Approval of Minutes
- c. Discussion/Adjustment of Agenda
- d. Administrative and Committee Reports
- e. Old Business
- f. New Business
- g. Informal Public Comment
- h. Closed Session (if required)
- i. Closing Comments from Trustees

**Section 3: Posting the Agenda.** The agenda shall be posted on the NCLWF website seven days before the meeting. However, if a meeting is scheduled to take place less than seven days after it is noticed as may be allowed by the Open Meetings Law, then the agenda shall be posted when it is available.

**Section 4: Amending the Agenda.** During a meeting of the NCLWF or its committees, the NCLWF or its committees may by majority vote, add or delete agenda items.

#### Article V - Informal Public Address to the NCLWF

**Section 1: Process.** The Executive Director shall include on the agenda for each regular meeting of the NCLWF a total of up to 15 minutes for informal comments from the public in attendance with each individual comment limited to a maximum of 3 minutes. The Chair will first recognize individuals or groups who have made a prior request to be heard and then may recognize others, subject to time available. The Chair may specify the time allotted to each individual or group. After the time for informal comments has expired, the Chair will recognize further speakers only upon motion duly made, seconded and carried.



**Section 2: Subject matter:** Comments shall be limited to subjects of business falling within the jurisdiction of the NCLWF. The NCLWF welcomes public comments on general issues. Comments will not be allowed on individual projects before the NCLWF for funding during the regular meeting.

### Article VI - Record of Meetings

Minutes and other records of the NCLWF shall be kept under the direction of the Executive Director, said record to be supplemented, where possible, by electronic recording.

### Article VII – Officers

**Section 1: Officers.** The officers of the NCLWF are the Chair, appointed by the Governor, and the Vice-Chair, appointed by the Chair.

#### Section 2: Duties.

The Chair shall preside at meetings of the NCLWF and shall have the following duties:

1. To rule motions in or out of order including the right to rule out of order any motion patently offered for obstructive purposes.
2. To determine whether a speaker has gone beyond reasonable standards of courtesy in his remarks and to entertain and rule on objections from other members of the NCLWF on this ground.
3. To call a brief recess at any time.
4. To adjourn in an emergency.
5. To appoint advisory and ad hoc committees as the Chair shall from time to time deem necessary. Such committees shall have no powers or authority to act on behalf of the NCLWF, unless approved by the NCLWF.
6. To participate in any committee meetings as an *ex officio* member of the Committee.

The Vice-Chair shall preside at meetings of the NCLWF if the Chair is absent or incapacitated, or when the Chair steps aside to avoid a conflict of interest, a potential conflict of interest or the appearance of a conflict of interest.

### Article VIII - Standing Committees

The NCLWF shall have the following standing committees appointed by the Chair:

Acquisition Committee  
Restoration, Innovative Stormwater, and Planning  
Committee Executive Committee



### Article IX – Special Committees

The Chair may establish advisory, ad-hoc, and workgroups as special committees from time to time to address specific issues as deemed necessary. When special committees are established, the action establishing the special committee shall include the purpose of the committee, the number of members, and the term. The Chair shall make appointments to special committees from among the trustees of the NCLWF. The Chair shall designate the chair of each committee from among its members and shall be an *ex officio* member of all committees.

### Article X - Quorum

A quorum is required to conduct a meeting of the NCLWF or its committees. A simple majority shall constitute a quorum. Vacancies on the NCLWF or its committees shall not be considered in computing a majority.

### Article XI - Voting

Each member of the NCLWF shall be authorized to make motions, second and vote on all matters coming before the NCLWF. Votes shall be recorded.

### Article XII - Reference to Robert’s Rules of Order and Applicable Law

The rules contained in the current edition of *Robert’s Rules of Order Newly Revised* shall govern the NCLWF in all cases to which they are applicable and not inconsistent with these procedures, any special rules of order the NCLWF may adopt, or with any statues or rules applicable to the NCLWF.

#### Effective Date

Versions	Revisions
April 28, 1997	Original Effective Date
May 1, 2000	Revised and Adopted
March 9, 2015	Revised and Adopted
November 8, 2017	Revised and Adopted





## Public Notifications

### Regular Meetings

Prior to the first meeting of each calendar year, the NCLWF shall approve a schedule of meetings for the NCLWF and its standing committees for the next calendar year. The approved schedule of meetings shall be filed with the Secretary of State. If a change in schedule is required, notice shall be filed with the Secretary of State at least 7 days in advance of the first meeting held pursuant to the revised schedule.

### Special Meetings

The agenda shall be posted on the NCLWF website seven days before the meeting. However, if a meeting is scheduled to take place less than seven days after it is noticed as may be allowed by the Open Meetings Law, then the agenda shall be posted when it is available.

### Notifications by Email

NCLWF will send meeting and other notifications to a distribution list. Anyone may subscribe to the list through the NCLWF website at [nclwf.nc.gov](http://nclwf.nc.gov)

### Website

Information concerning NCLWF may be found at [nclwf.nc.gov](http://nclwf.nc.gov)



## Multiple Program Guidelines and Practices

The policies in this section (MPP-001 – MPP-005) apply to Acquisition and Restoration Programs, including the Donation Mini-Grant Program.



**Multiple Program Guidelines and Practices:**

Administrative Costs and Caps for Grant Contracts (MPP-001)

**Background:** The NCLWF recognizes that grant recipients incur administrative costs in the process of managing projects. The purpose of these Guidelines and Practices is to 1) clarify that only administrative costs directly necessary to the management of a NCLWF grant contract are reimbursable and 2) establish a cap on administrative costs for acquisition projects.

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**Guidelines and Practices:**

1. Eligible administration costs include the direct labor costs associated with progress reporting, reimbursement requests, and project scope, budget and schedule management.
2. Costs not eligible for reimbursement include audits, direct phone costs, direct postage costs, grant recipient’s overhead (indirect) cost, including, rent, utilities, insurance costs, facility costs, general office, general phone and general postage costs.
3. For acquisition projects, the total amount to be reimbursed will be up to 10% of the total transaction costs (e.g., appraisal, survey, baseline documentation report, legal fees for preparation and recordation of easement) of the project not to exceed \$25,000.

**Effective Date**

Versions	Revisions
February 3, 2003	Original Effective Date
March 9, 2015	Revised and Adopted



## Multiple Program Guidelines and Practices:

### Project Change Requests and Delegation of Decision Authority (MPP-002)

**Background:** Changes in some projects between initial NCLWF Board approval and completion are common and often acceptable. Bringing every minor change request back to the full Board would unnecessarily delay implementation. Through the following guidelines, the Board has delegated some authority to review and approve certain changes to staff and the Board Chair.

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#### Guidelines and Practices:

Project change requests that provide additional benefit to NCLWF at no additional cost to NCLWF do not require approval beyond staff level. With exception to the specific conditions described below, any change to project scope, deliverables, or cost that would diminish project outcomes shall be brought back to the Board for consideration. NCLWF staff or Board Chair may elect to bring a request before the full Board for any reason regardless of the delegation described below.

#### Change Metrics

The following metrics will be calculated for any requested project change where applicable to the program. Percentage changes will be calculated based on the change divided by the original value.

- Percent change in NCLWF cost per acre or linear foot
- Percent change in total project scope (i.e., acres or linear feet)
- Percent change in match
- Change in project score (e.g., resource or matching funds)

#### Delegations

##### Program Managers

Review and approval of the following changes are delegated to the NCLWF Program Managers:

- All budget reallocations within the Donated Mini-Grant Program, including reduction of match provided the final match is greater than or equal to the NCLWF award
- Reallocation of less than 10% of the total NCLWF award to other standard project budget line items
- Any change to project scope, deliverables, or cost of less than 5% in the relevant metrics provided such change does not result in a decrease in score lower than the lowest funded project in the same grant cycle
- Projects that, at close out, were completed with a reduction in scope and a proportional reduction in NCLWF costs and does not disproportionately change the expected benefit of the project (e.g., public access)



**Executive Director**

Review and approval of the following changes are delegated to the NCLWF Executive Director:

- Reallocation of between 10% and 20% of the total NCLWF award to other standard project budget line items
- Any change to project scope, deliverables, or cost of between 5% and 10% in the relevant metrics provided such change does not result in a decrease in score lower than the lowest funded in the same grant cycle
- Change in conservation strategy that does not reduce public benefit (e.g., switching from conservation easement to determinable conservation easement)
- Addition of standard reserved rights

**Board Chair**

Review and approval of the following changes are delegated to the NCLWF Board Chair:

- Reallocation of more than 20% of the total NCLWF award to other standard project budget line items, up to \$100,000
- Any change to project scope, deliverables, or cost of between 10% and 25% in the relevant metrics
- Any change to project scope, deliverables, or cost that results in a decrease of score lower than the lowest project funded in the same grant cycle
- Any change that adds a new, non-standard project budget line item
- Addition of non-standard reserved rights that are traditionally approved at the time of award

**Documentation**

NCLWF staff is responsible for maintaining documentation of any calculations and decisions made under these guidelines. Any changes made at the Board Chair level will be reported to the Board at its next meeting.

**Effective Date**

<b>Versions</b>	<b>Revisions</b>
November 10, 2008	Original Effective Date
February 10, 2014	Revised and Adopted
February 28, 2023	Revised and Adopted



## Multiple Program Guideline and Practices:

### Use of Funds for Acquisition of Real Property Interest (MPP-003)

**Background:** It is the interest of the NCLWF board to focus on land acquisition that directly protects surface water, ecological communities, historic sites or military installations.

It is also the interest of the board to make certain funds are not paid above an appraised value while providing some flexibility for the development of greenways or local parks. For example, where the municipality or county has demonstrated a willingness to use its eminent domain authority in order to accomplish acquisition, staff or the Board of Trustees may reimburse a reasonable amount above the appraised value to avoid the cost of litigation and the uncertainty of ultimate valuation.

Lastly, for stream restoration projects, the interest of the board is to direct funds to the restoration of stream banks and require the necessary easements to be donated for the project.

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#### Guidelines and Practices:

1. Funds from the NCLWF are typically used for purchase of property fee simple or conservation easements on property as described as one or more of the following:
  - a. Land that is within the first 300 feet from the top of the stream bank, or the width of the 100-year floodplain, whichever is greater
  - b. Land containing natural areas, element occurrences, or species of concern as defined by NC Natural Heritage Program or adjacent buffer land that is critical to the viability of those areas
  - c. Land buffering military bases or land identified for federal funds through the Readiness and Environmental Protection Initiative
  - d. Historic properties or the viewshed of historic properties
2. Acquisition of land or easements outside any of the above areas should be considered with matching funds or be donated as match value to the project.
3. Funds from the NCLWF typically may not be used to purchase any improvements on the property. The NCLWF will consider purchase of historic structures case-by-case.
4. Funds from the NCLWF may not be used to remove any debris from property.
5. NCLWF will not reimburse any portion of any purchases for which the price is in excess of the appraised value, except as noted in subsection (6) below.
6. For greenways and acquisitions by municipalities and counties, the NCLWF staff may reimburse any portion of any purchase for which the price is 10 percent greater than the appraised value up to \$20,000. Any amount over this must be considered by the Board of Trustees. These Guidelines and Practices will apply to greenway projects completed by nonprofit corporations if it will avoid the use of eminent domain by a local government partner.



7. Funds from the NCLWF may not be used for purchase of easements for stream restoration projects. Easements for stream restoration projects must be donated as match to the project.

**Effective Date**

<b>Versions</b>	<b>Revisions</b>
February 18, 2015	Original Effective Date
May 18, 2020	Clarified use of funds in properties exceeding an appraised value to develop greenways or local parks. (revised section #5 and #6; deleted original #7)



## Multiple Program Guidelines and Practices:

### Use of Eminent Domain (MPP-004)

**Background:** It is the purpose of the NCLWF to “finance projects that clean up or prevent surface water pollution and for land preservation.” (G.S. § 143B-135.234(c)). The statute requires that NCLWF consider eleven specific factors when awarding grants. (G.S. § 143B-135.242 (b)). In addition, the statute provides that “Trustees may develop guidelines in addition to the grant criteria consistent with and as necessary to implement this Article.” G.S. § 143B-135.242 (c).

NCLWF does not have the legal authority to acquire lands by condemnation. Specifically, G.S. § 143B-135.242(d) provides that the Trustees may acquire land by purchase, negotiation, gift, or devise.” However, “[n]othing in this section shall allow the Trustees to acquire land under the right of eminent domain.” This language limits NCLWF’s ability to acquire land. Other State departments and agencies are not limited in this manner. For example, the North Carolina Department of Administration, an agency of the State of North Carolina, may acquire lands by exercise of the power of eminent domain for all State agencies subject to the approval of the Governor and the Council of State pursuant to G.S. § 146-341(4)(d).

The NCLWF can legally award grant funds for the purpose of acquiring property to other governmental entities with the power of condemnation. The NCLWF statute does not preclude the Trustees from awarding grants for projects that include credits for land acquired by condemnation or acquisition of land through condemnation by the grant recipient. However, it is the preference of the NCLWF to fund projects in which landowners are ready and willing to sell or donate land in a timely manner.

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### Guidelines and Practices:

NCLWF grant funds may be used to pay for the cost of the land acquired by a grant recipient regardless of whether the land was acquired through that grant recipient’s right of eminent domain as long as the grant award is consistent with the objectives for use of NCLWF grants which are set forth in G.S. § 143B-135.234 (c). NCLWF grant funds may not be used to pay for legal fees or costs incurred by the grant recipient to acquire land through condemnation actions under the grant recipient’s right of eminent domain unless approved by the Board of Trustees of the NCLWF in writing prior to the action. The Trustees shall review a grant recipient’s request to use funds for legal fees and costs to acquire land through condemnation on a case-by-case basis. Any request shall be provided in writing by the grant recipient.





Versions	Revisions
September 22, 2003	Original Effective Date
June 3, 2015	Revised and Adopted

The NCLWF history with eminent domain 2000-2008

1. The Board considered eminent domain issues in 2000 and 2001 as part of its funding decision for the Division of Forest Resources- Sterling Tract/Dupont Forest.
2. In September 2001, the Board approved the following statement related to eminent domain in its appraisal Guidelines and Practices: “For municipal or county greenway projects, where partial linear acquisitions from multiple owners are required to complete a project and where the municipality or county has demonstrated a willingness to use its eminent domain authority in order to accomplish the acquisition of intervening properties, NCLWF will reimburse a reasonable amount not to exceed \$5,000 in excess of the appraised value, for the reasonable cost of avoided litigation and the uncertainty of ultimate valuation.”
3. In July 2003, the Board approved Rocky Mount’s request to use remaining funds in its contract to pay for legal expenses related to the eminent domain actions it was pursuing on six tracts in their Tar River greenway project. The Board specifically noted that its approval was made “with the understanding that this represents an exception to the Board’s standard policy.”
4. In September 2003, the Board adopted the following language related to eminent domain and requested that staff insert the language in all new contracts with local governments, beginning with the July 2003 approvals: “Clean Water Management Trust Fund grant funds may not be used for any eminent domain litigation or any action or expenditure related to eminent domain, unless approved by the Board of Trustees of the Clean Water Management Trust Fund in writing prior to the action. The Board of Trustees shall review requests to use funds for eminent domain action on a case-by-case basis. Requests shall be provided in writing by the Grant Recipient.”
5. In November 2004, the Board denied a request by New Bern (1998B-504) to reimburse it for a \$158,000 expense it had incurred in obtaining a tract by eminent domain.
6. In February 2008, the Board voted to allow Trenton to use eminent domain to acquire property for a wastewater land application site, but specified that NCLWF funds could not be used in any action of the condemnation, including deposit for the condemnation proceedings. Furthermore, the NCLWF would not reimburse Trenton for the property (purchase or transaction costs) until the condemnation proceedings were concluded (final award or dismissal of the court action).



## Multiple Program Guidelines and Practices:

### Guidelines Establishing Minimum Criteria Under G.S. § 143B-135.242 for Approval of Grants for Projects (MPP-005)

**Background:** In order for the North Carolina Land and Water Fund to approve the award of a grant for a project, the project must meet the minimum criteria stated in these Guidelines and Practices. If a project meets the minimum criteria, a grant may be awarded for the project, but neither the project nor the applicant is entitled to a grant. Whether or not a project that meets the minimum criteria in these Guidelines and Practices is awarded a grant is within the sound discretion of the North Carolina Land and Water Fund Board of Trustees taking into account all the purposes of Part 41 of Article 2 of Chapter 143B of the North Carolina General Statutes.

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#### Guidelines and Practices:

In order for a project to be eligible for a grant, the project must meet the requirements of the following sections:

1. A Project must be submitted by an eligible applicant, per G.S. 143B-135.238:
  - a. A State agency.
  - b. A local government unit.
  - c. A nonprofit corporation whose primary purpose is the conservation, preservation, or restoration of our State's cultural, environmental, or natural resources.
  
2. A Project must meet one of the purposes established for the Fund in G.S. 143B-135.234(c):
  - a. To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses.
  - b. To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and enhancing drinking water supplies, including the development of water supply reservoirs.
  - c. To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality.
  - d. To restore previously degraded lands to reestablish their ability to protect water quality.
  - e. To facilitate planning that targets reductions in surface water pollution.
  - f. To finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State's waterways, to improve water quality, and to research alternative solutions to the State's water quality problems.



- g. To provide buffers around military bases or for State matching funds for the Readiness and Environmental Protection Initiative, a federal funding initiative that provides funds for military buffers.
  - h. To acquire 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 purposes.
  - i. To acquire land that contributes to the development of a balanced State program of historic properties.
3. A Project must contribute to at least one of the goals stated below:
- a. The significant enhancement and conservation of water quality in the State,
  - b. The objectives of the various basinwide management plans for the State's river basins and watersheds,
  - c. The promotion of regional integrated ecological networks insofar as they affect water quality,
  - d. The specific areas targeted as being environmentally sensitive,
  - e. The preservation of water resources with significant recreational or economic value and uses,
  - f. The development of a network of riparian buffer-greenways bordering and connecting the State's waterways that will serve environmental, educational, and recreational uses,
  - g. Water supply availability and the public's need for resources adequate to meet demand for essential water uses. Criteria developed pursuant to this subdivision may include consideration of the likelihood of a proposed water supply project ultimately being permitted and built,
  - h. The protection or preservation of land with outstanding natural or cultural heritage values,
  - i. The protection or preservation of land that contains a relatively undisturbed and outstanding example of a native North Carolina ecological community that is now uncommon; contains a major river or tributary, watershed, wetland, significant littoral, estuarine, or aquatic site, or important geologic feature; or represents a type of landscape, natural feature, or natural area that is not currently in the State's inventory of parks and natural areas,
  - j. The protection or preservation of a site or structure that is of such historical significance as to be essential to the development of a balanced State program of historic properties, or
  - k. Significant contribution to the geographic distribution of funds as appropriate in relation to a project that serves at least one of the purposes listed in Section 2 hereof.
4. A Project must be supported by a complete application on the forms provided by the N.C. Land and Water Fund.



5. A Project must not use any grant funds to satisfy compensatory mitigation requirements under 33 USC §1344 or G.S. § 143-214.11.

Versions	Revisions
June 5, 2018	Original Effective Date



## Acquisition Program Guidelines and Practices

The Acquisition Program includes the acquisition of land for certain purposes outlined in G.S. § 143B-135.234 (c), including:

- To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses.
- To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and enhancing drinking water supplies, including the development of water supply reservoirs.
- To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality.
- To prevent encroachment, provide buffers, and preserve natural habitats around military installations or military training areas, or for State matching funds of federal initiatives that provide funds to prevent encroachment, provide buffers, and preserve natural habitats around military installations or military training areas.
- To acquire 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.
- To acquire land that contributes to the development of a balanced State program of historic properties.
- To protect and restore floodplains and wetlands for the purpose of storing water, reducing flooding, improving water quality, providing wildlife and aquatic habitat, and providing recreational opportunities.



**Acquisition Program Guidelines and Practices:**

Appraisal Guidelines and Practices (ACQ-001)

**Background:** The acquisition of all real property interests, including fee simple and conservation agreement interests, through an Acquisition Program award must have substantiation of fair market value per the requirements of these Guidelines and Practices. These Guidelines and Practices apply to all acquisitions made using NCLWF and matching funds, including bargain sales.

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**Guidelines and Practices:**

1. A minimum of one appraisal is required to determine the fair market value of all real property interests being acquired.
  - Exception for NCLWF requested funds: When the tax assessed land value (“tax value”) of a real property interest is less than \$200,000, the tax value will be acceptable in lieu of an appraisal. For fee simple absolute acquisitions, up to 100% of the tax value may be used as substantiation of value. For conservation agreement-only acquisitions, up to 80% of the tax value may be used as substantiation of value.
  - Exception for matching funds: When a fee simple absolute interest is donated, 100% of the tax value may be used as substantiation of value. When a conservation easement is donated, 80% of the tax value may be used as substantiation of value. This exception does not apply to bargain sales.
2. A second appraisal is required when the value of a real property interest, irrespective of any bargain sale, exceeds or is expected to exceed \$1,000,000.
3. All appraisals must adhere to NCLWF appraisal guidelines. Appraisals will be reviewed by the State Property Office or another reviewer approved by the State Property Office. If any appraisal is not satisfactory to the State Property Office or its designated reviewer, or if the reviewer cannot reach a conclusion of value, additional appraisals may be required.

**Effective Date**

Versions	Revisions
Sept. 24, 2001	Original Effective Date
Feb. 17, 2003	Revised and Adopted
Sept. 22, 2003	Revised and Adopted
March 9, 2015	Reauthorized
March 2, 2022	Revised and Adopted
Aug. 28, 2024	Revised and Adopted



**Acquisition Program Guidelines and Practices:**

Purchase and Removal of Structures (ACQ-002)

**Background:** Prior to the merger of NCLWF and Natural Heritage Trust Fund (NHTF) in 2013, the NCLWF board had a practice not to purchase any improvements (houses, structures, etc.), or pay for the removal of any unwanted structures or debris, on any property purchased with NCLWF funds. Neither the purchase of structures nor the removal of debris was credited as matching value to a NCLWF project.

The revisions to NCLWF’s statute in 2013 authorized the use of NCLWF funds to acquire “land that contributes to the development of a balanced State program of historic properties.” G.S. § 143B-135.-234(c)(9).

The NHTF did not have a practice concerning the purchase of improvements. It was not common practice to purchase improvements but there was no prohibition. The NHTF focused on the purchase of land but recognized historic structures were often integral to a site purchased for the purpose of preserving historic and cultural resources and developing a program of historic properties.

In 2014 the NCLWF board decided not to adopt a practice but did agree on the guidance below concerning purchase of structures on historic sites.

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**Guidance:** It is the intention of the NCLWF board to focus on the acquisition of land that contributes to the development of a balanced State program of historic properties and consider improvements on these properties on a case-by-case basis.

Guidance on purchase of improvements:

- The Fund may consider the purchase of historic structures case by case.
- The purchase of historic structures may be used as match to NCLWF grants.
- NCLWF funds may not be used for rehabilitation, repair, restoration, operation, or maintenance of a historic structure.
- Applications proposing the use of any NCLWF funds or matching funds for the purchase of a historic structure must include plans on the use and maintenance of any structures.

**Effective Date**

Versions	Revisions
June 2, 2014	Original Effective Date



**Acquisition Program Guidelines and Practices:**

~~Transaction Costs for State Agencies (ACQ-003) Repealed December 5, 2023~~

**Effective Date**

<b>Versions</b>	<b>Revisions</b>
February 10, 2014	Original Effective Date
December 5, 2023	Repealed





**Acquisition Program Guidelines and Practices:**

Income Generation and Mitigation Activities within the NCLWF Conservation Agreement Areas (ACQ-004)

**Background:** The North Carolina Land and Water Fund (NCLWF) was established in 1996 primarily to protect water quality interests in the State. In 2013, the purpose of the NCLWF was expanded to include the protection of natural heritage, historic and cultural resources as well as buffering military installations.

When the NCLWF Board elects to fund a land protection project, there are two arrangements in which the State retains an interest in perpetuity: 1) a State-held conservation easement, and 2) dedications under either the State Nature Preserves Act or State Nature and Historic Preserve Dedication Act. There may also be term agreements that exist only for a set number of years or restrictive covenants. These instruments are hereafter referred to broadly as “conservation agreements”.

It is the intention of the NCLWF that real property interests purchased with funds from the NCLWF shall not produce income that is inconsistent with or causes harm to the conservation purposes for which the land is held and used.

It is also the intention of the NCLWF to provide net benefits to environmental and conservation values including, but not limited to water quality and ecological diversity.

G.S. § 143B-135.238 (d)(1) prohibits the NCLWF from awarding grants to satisfy compensatory mitigation requirements under 33 USC §1344 or G.S. § 143-214.11.

By these Guidelines and Practices, the NCLWF defines when income may be generated within a conservation agreement area and broadly limits mitigation activity or mitigation credits in the NCLWF conservation agreement areas. These guidelines apply to conservation agreements on property owned by private individuals, nonprofit groups, and government agencies.

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**Guidelines and Practices:**

A. Income Generation within conservation agreement areas

Conservation agreements shall only allow income from activities that are not inconsistent with the conservation values and/or purposes for which the land is protected.



B. Mitigation Activities within conservation agreement areas

The NCLWF will not authorize a conservation agreement to be recorded that allows mitigation activity or mitigation credits, nor be recorded where existing mitigation activities or credits would be allowed to continue, except when the mitigation activity is not inconsistent with the NCLWF's purpose and does not result in duplicative payment for a benefit or action already acquired by the NCLWF.

**Effective Date**

<b>Versions</b>	<b>Revisions</b>
March 9, 2015	Original Effective Date
December 1, 2020	Revised and Adopted



**Acquisition Program Guidelines and Practices:**

State Property Office (SPO) Delegation (ACQ-005)

**Background:** The Department of Administration delegated authority to the Department of Environment and Natural Resources to enter into and acquire conservation easements for the North Carolina Land and Water Fund program utilizing funds from NCLWF.

The practical application of this delegation is NCLWF conservation easements do not need to be approved by the COS, expediting the process of contract administration and easement acquisition.

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A copy of the Council of State resolution is on the following four pages.

**Effective Date**

<b>Versions</b>	<b>Revisions</b>
December 30, 2003	Original Effective Date



North Carolina  
Department of Administration

Michael F. Easley, Governor  
Gwynn T. Swinson, Secretary

State Property Office  
Joseph H. Henderson, Director

December 30, 2003

Secretary William G. Ross, Jr.  
Department of Environment and Natural Resources  
1601 Mail Service Center  
Raleigh, NC 27699-1601

RE: Clean Water Management Trust Fund

Dear Secretary Ross:

Effective January 1, 2004, The Department of Administration hereby delegates authority to the Department of Environment and Natural Resources to enter into and acquire conservation easements for the Clean Water Management Trust Fund program utilizing funds from that program. A copy of the Council of State resolution of September 9, 2003, is attached to show the authority. Please provide the State Property Office with all original easements and all other pertinent information as required by the Council of State resolution. If additional delegation of authority is granted within your Department, please provide a copy of that delegation to our office.

Sincerely,

Joseph H. Henderson

JHH/jmw  
enclosures

cc: Bill Holman

**Mailing Address:**  
1321 Mail Service Center  
Raleigh, N.C. 27699-1321

**Telephone (919) 733-4346**  
Fax (919) 733-1431  
State Courier #52-71-78

**Location:**  
116 West Jones Street  
Raleigh, North Carolina

An Equal Opportunity / Affirmative Action Employer  
Web: <http://go.doa.state.nc.us>



STATE PROPERTY MATTERS - Continued

RESOLUTION - Continued

ITEM 1

WHEREAS, N.C.G.S. §146-22 provides that every acquisition of land on behalf of the State or any State agency shall be made by the Department of Administration and approved by the Council of State; and,

WHEREAS, N.C.G.S. §143-341(4)d provides that the Department of Administration has the power and duty to acquire all land for all State agencies, subject to the approval of the Governor and Council of State in each instance; and,

WHEREAS, N.C.G.S. §146-32 authorizes the Governor, acting with the approval of the Council of State, to adopt rules exempting from the requirements of Subchapter II, Chapter 146 of the General Statutes of North Carolina, such classes of easements as may be deemed advisable; and,

WHEREAS, N.C.G.S. §143-341(4)d authorizes the Governor, acting with the approval of the Council of State, to enter into conservation easement agreements and hold such conservation easements for the Conservation Reserve Enhancement Program, the Confined Animal Operations Program and the Wetlands Restoration Program; and,

WHEREAS, on February 8, 2000, the Governor and Council of State approved a Resolution authorizing the Department of Administration, without further approval from the Governor and Council of State, to enter into conservation easement agreements and hold such conservation easements for the Conservation Reserve Enhancement Program, the Confined Animal Operations Program and the Wetlands Restoration Program; and,

WHEREAS, the Clean Water Management Trust Fund, pursuant to N.C.G.S. §113-145.1, has been established in order to help finance projects, including the acquisition of conservation easements, that specifically address water pollution problems and focus on upgrading surface waters, eliminating pollution, and protecting and preserving unpolluted surface waters, including urban drinking water supplies; and,

WHEREAS, the Clean Water Management Trust Fund anticipates the acquisition of numerous conservation easements under the Clean Water Management Trust Fund program; and,

WHEREAS, adherence to standard acquisition requirements set out in Chapters 143 and 146 causes delay in the acquisition of conservation easements necessary to protect the State's water supplies and creates a burden upon the resources of the State Property Office, Department of Administration, and the Council of State.

**NOW, THEREFORE, BE IT HEREBY RESOLVED:**

1. The Department of Administration is authorized, without further approval of the Governor and the Council of State, to enter into conservation easements and to acquire and hold such conservation easements for the Clean Water Management Trust Fund Program utilizing funds from that Program.
2. To the extent it deems appropriate, the Department of Administration is further authorized to delegate to the Department of Environment and Natural Resources the authority to enter into conservation easements agreements as set forth above.
3. All easements shall be acquired in the name of the State of North Carolina. Copies of all easements and such other pertinent information as may be required by the Department of Administration, shall be promptly furnished to the Department.
4. Nothing contained in this Resolution shall require the adoption of rules pursuant to the Administrative Procedures Act to implement the provisions herein.



PROPERTY MATTERS NOT SUBJECT TO N.C.G.S. §146

ACQUISITION BY DEED

On a motion by Commissioner of Insurance Long, seconded by Superintendent of Public Instruction Ward, the Council of State unanimously approved the following Acquisition by Deed:

ITEM 1

GRANTOR: Chaucer Investments, LLC

GRANTEE: North Carolina Real Estate Commission

LOCATION: 1313 Navaho Drive, City of Raleigh, Wake County

AREA: 1.3 acres improved with a 17,232 sq. ft. two-story brick office building

UNIT COST: \$5.03/sq. ft. - land  
\$72.24/sq. ft. - improvements

CONSIDERATION: \$1,530,000

COMMENTS: The property proposed for acquisition has been leased by the State of North Carolina for the N.C. Real Estate Commission since 1987. Subsequent to acquisition, the property will continue to be occupied by the N.C. Real Estate Commission. Pursuant to N.C.G.S. §93A-3(f), funds for this acquisition will be provided from the grantee's assets.

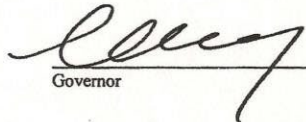
N.C. GLOBAL TRANSPARK AUTHORITY

On a motion by Lieutenant Governor Perdue, seconded by State Auditor Campbell, the Council of State approved the NC Global TransPark request that the Global TransPark be authorized to exercise power of eminent domain on the 28 properties indicated on the map presented to the Council for their review, see attachment on file. (Commissioner of Labor Berry voted no).

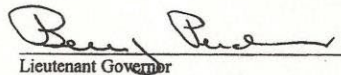
OTHER DISCUSSION

Ms. Jennifer Wilder from North Carolina Central University provided an update on the mold issue at the NCCU. She informed the Council that students had been placed in hotels and apartments, and transportation was being provided for the students by the university. Governor Easley stated that NCCU was authorized by the General Assembly to redirect proceeds from Bond Sale to address the mold issue.

There being no further business, a motion to adjourn was made by Lieutenant Governor Perdue, which the Council of State unanimously approved.



\_\_\_\_\_  
Governor



\_\_\_\_\_  
Lieutenant Governor



Ralph Campbell, Jr.  
State Auditor

Michael Ward  
Superintendent of Public Instruction

Roy Cooper  
Attorney General

Brett Cobb  
Interim Commissioner of Agriculture

Cherie Berry  
Commissioner of Labor

James E. Fay  
Commissioner of Insurance

APPROVED:

Roy Cooper  
Attorney General Roy A. Cooper, III

This is to certify that the foregoing comprises the minutes of the Council of State at a meeting held September 9, 2003.

Witness my hand, this 7<sup>th</sup> day of October, 2003

David McCoy  
Secretary



## Acquisition Program Guidelines and Practices:

### Construction of Natural Surface Trails (ACQ-006)

**Background:** The NCLWF has allowed for construction of hiking trails as a standard right and on occasion other trails approved on a case-by-case basis, such as mountain bike trails. Staff and trustees recognize that proper trail construction is as, if not more, important than the impacts of the trail users. These Guidelines and Practices are to ensure that new trails, when intended for general public use, or subject to frequent use by large numbers of individuals, are planned and constructed to the most up-to-date, sustainable standards and prioritize protection of the conservation values. These Guidelines and Practices will apply to State-held conservation easements and other conservation instruments that NCLWF must approve, such as restrictive covenants. Private trails for personal use by the landowner and a small number of guests that will not have more than a de minimis impact on the land, water quality, or environment are excepted from the application of these guidelines. Trails on land outside of the NCLWF easement area(s) are also excluded from the application of these Guidelines and Practices.

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#### Guidelines and Practices:

1. Easements recorded after July 1, 2017, will include language that requires all new trail construction and realignment requiring soil disturbance to follow best practices for sustainable trail design and construction and to have prior written approval by NCLWF staff, per the guidance below. Private trails for personal use by the landowner and a small number of guests that will not have more than a de minimis impact on the land, water quality, or environment are excepted from the application of these guidelines.
2. Design and Construction Guidance:
  - a. Trails must be constructed so as to have minimal adverse impact on the Conservation Values of the easement area either during or after construction
  - b. Boardwalks, ramps, and handrails are permitted as required by terrain
  - c. Park benches, litter receptacles, and trail/feature signs may be constructed along trails; and
  - d. NCLWF does not require trails to be built to ADA standards, but will allow trails to be constructed to ADA standards if required by local ordinances or other funding sources or if desired by the landowner(s).
3. In approving trail design, NCLWF staff will consider:
  - Designer qualifications – The trail design should be prepared by a qualified trail designer, approved by staff. In determining qualifications, staff will review previous trails designed by the trail designer and must see a proven track record of sustainably designed trails.
  - Builder qualifications – The building team should be led by a qualified builder, approved by staff. In determining qualifications, staff will review previous trails constructed by the trail builder and must see a proven track record of sustainably constructed trails. NCLWF prefers a member of a recognized trail building group, such as the Professional Trail Building Association.





- Trail alignment - The trails should be a minimum of 30 feet from the top of bank of any streams except at stream crossings and should avoid other sensitive areas, such as wetlands, natural heritage elements, and historic and cultural sites. Planned access points to streams and other features of interest are permitted where appropriate.
  - Planned trail width - Current design standards and equipment are not more than 48" for a single-track trail; paved greenways should follow guidelines established by local ordinances or other requirements set by funding sources such as Dept. of Transportation.
  - Stream crossings - The number of stream crossings will be minimized as will the impact to the stream and they shall be located and constructed in such a way as to maximize water quality protection.
  - Trail length – Trails should be long enough to distribute impact. For biking trails, the suggested minimum is a trail length of at least 5 miles on the subject tract or connection to a trail network of at least 5 miles.
  - Topography – Trails shall be constructed utilizing the then-current best practices. For example, current sustainable trails guidelines include:
    1. Trail grade less than half of the side slope grade,
    2. Average trail slope not more than 10%,
    3. Maximum sustainable grade,
    4. Frequent grade reversals; and
    5. Outsloping trails.
  - Management and maintenance – A trail management plan that includes regular inspection and maintenance activities, such as de-berming, shall be submitted with the design and construction request.
  - Subject matter experts – Staff will utilize available resources to assist in trail design review. These can include NC Division of Parks and Recreation Trail Planners, Natural Heritage Program staff, and State Historic and Cultural resources staff, among others.
4. NCLWF will retain the right to deny new trails or require maintenance or closing of any existing trails that are considered detrimental to conservation values.

#### **Easements recorded after July 1, 2017**

1. Easements will continue to have construction of walking and hiking trails as a standard reserved right. Mountain biking trails will be a standard optional right. Any other uses of trails must be requested and approved by the board at the time of grant award.
2. The prohibition on uses of motorized vehicles except for management and stewardship will remain as standard language in the easement.
3. Any grant recipient or landowner may ask that biking, or other trail use be excluded from the conservation easement.



**Easements recorded prior to the passage of these Guidelines and Practices**

When an existing easement is silent on construction of biking trails as a reserved right, staff will have full discretion in allowing trail rights not explicitly reserved under the terms of the easement. Staff will consider all of the requirements listed above, and any additional information specific to the easement, including intent of the original landowner if the fee ownership has changed.

**Effective Date**

Versions	Revisions
March 1, 2017	Original Effective Date
June 5, 2018	Revised and Adopted



**Acquisition Program Guidelines and Practices:**

Property Management Costs (ACQ-007)

**Background:** NCLWF recognizes the need for funds to secure a property or immediately address resource concerns after purchase, and such activities help protect the conservation values and the investment of funds in the project.

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**Guidelines and Practices:**

1. Property Management costs are defined as funds needed for securing a property or immediate resource protection.

Examples of eligible costs include the following: purchase and installation of gates or other barriers to prevent trespass; management/restriction of access points to areas with conservation values (streams, natural heritage areas, cultural, or historic areas); and immediate stabilization of eroding streambanks. Other expenses may be deemed eligible by NCLWF pending substantiation of need at time of application.

2. Local governments, nonprofit organizations, and State agencies without a dedicated land acquisition funding mechanism are eligible for property management costs.
3. Total property management funds reimbursed by NCLWF or credited as match is \$5,000 maximum.
4. All expenses for property management must be incurred during the contract period, be substantiated by an invoice from a vendor or signed form attesting to in-kind work, be identified in the application, and not pay for any activities prohibited by other NCLWF guidelines.

**Effective Date**

Versions	Revisions
November 8, 2017	Original Effective Date
March 2, 2022	Revised and Adopted



**Acquisition Program Guidelines and Practices:**

Reimbursement of Transaction Costs when a Project Fails to Close (ACQ-008)

**Background:** NCLWF will reimburse for project expenses prior to or subsequent to Closing, provided the Grant Recipient complies with conditions of the Grant Contract. Closing is defined as recording of Warranty Deed, Conservation Agreement, and other documents required by the Grant Contract.

The NCLWF recognizes there may be expenses needed to establish a final agreement with the landowner and is willing to share reasonable costs to establish a purchase value before greater expenses are incurred. Any requests for reimbursement that is above what is outlined below may be considered by the Board.

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**Guidelines and Practices:**

When an acquisition project fails to close, staff is authorized to reimburse up to 50% of the costs of appraisals, ESA Phase I, and reasonable staff time.

Versions	Revisions
May 18, 2020	Original Effective Date



# Restoration Program Guidelines and Practices

## **Restoration Program**

The restoration program consists of new and in-progress stream restoration and innovative stormwater projects; and wastewater and stormwater infrastructure projects funded in previous cycles that are in progress.

### **Stream Restoration Projects are for the following purposes:**

- to restore previously degraded lands to reestablish their ability to protect water quality (G.S. § 143B-135.234 (c)(4)).
- to facilitate planning that targets reductions in surface water pollution (G.S. § 143B-135.234 (c)(5)).

### **Innovative Stormwater Projects are for the following purposes:**

- to finance innovative efforts, including pilot projects, to improve stormwater management, to reduce pollutants entering the State's waterways, to improve water quality, and to research alternative solutions to the State's water quality problems (G.S. § 143B-135.234 (c)(6)).

### **Wastewater Projects are for the following activities that were previously a part of NCLWF's purpose but have been removed by legislation by the General Assembly:**

- to repair failing wastewater collection systems and wastewater treatment works if the repair is a reasonable remedy for resolving an existing waste treatment problem and the repair is not for the purpose of expanding the system to accommodate the anticipated growth of the community.
- to repair and eliminate failing septic tank systems, to eliminate illegal drainage connections, and to expand a wastewater collection system or wastewater treatment works if the expansion eliminates failing septic tank systems or illegal drainage connections.
- to facilitate planning that targets reductions in surface water pollution.

### **Stormwater Projects are for the following activities that were previously a part of NCLWF's purpose but have been removed by legislation by the General Assembly:**

- to finance stormwater quality projects.
- to facilitate planning that targets reductions in surface water pollution.



**Restoration Program Guidelines and Practices:**

Construction Bids and Award Reductions (RES-001)

**Background:** In an effort to recover funds in construction projects, before the grant closeout end of the project, the NCLWF may reduce the grant amount, if appropriate, based on construction bids. The amount of reduction is based on a negotiated revised budget, which takes into account areas where the project costs may increase, and includes contingency funds. The contingency line item is usually 5% of construction costs, unless the grant recipient can provide a reason for a higher percentage.

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**Guidelines and Practices:**

Excerpt from current restoration Grant Contract:

“ ...

- a. Reduction of the Grant based on Construction Cost less than Budgeted Construction Cost.

The Fund may reduce the Grant amount if the Grant Recipient expects actual construction costs to be less than budgeted construction costs, as follows:

(i) The Grant Recipient shall provide to the Fund construction contract pricing information consisting minimally of a statement of the scope of the construction work, agreed-upon constructor or vendor pricing for the construction work, and a total anticipated construction cost based on the pricing.

(ii) The Grant Recipient shall deliver the construction contract pricing information to the Fund’s Contract Administrator within 30 days of executing a construction contract for the Project.

(iii) The Fund may, at its discretion after comparing the total anticipated construction cost with the Grant Contract project budget, choose to reduce the Grant. If the Fund chooses to reduce the Grant, the Fund’s Contract Administrator will prepare an amendment to the Grant Contract for this purpose, and the Fund will approve requests for reimbursement of the Grant Recipient’s construction costs only after the amendment has been signed by both the Grant Recipient and the Fund.

...”

**Effective Date**

Versions	Revisions
	Original Effective Date
March 9, 2015	Revised and Adopted



**Restoration Program Guidelines and Practices:**

Construction Contingency Funds (RES-002)

**Background:** Construction contingency funds allow the project to cover unanticipated construction costs, often resulting from unexpected conditions encountered during construction. Construction contingency funds are not intended to be used for work that is not construction (e.g., design or construction administration) nor for construction that is not part of the project scope of work (e.g., add-on work).

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**Guidelines and Practices:**

Contingency funds are to be matched by at least 50 percent in funds provided by the grant recipient or project partners other than NCLWF. Construction contingency funds will be disbursed only after the Grant recipient has demonstrated to the Fund that it has expended 100 percent of funds in Construction line items, 100 percent of local matching funds, and at least 90 percent of all other matching funds, including matching grant and/or loan funds.

**Effective Date**

Versions	Revisions
March 16, 2006	Original Effective Date
March 9, 2015	Reauthorized
June 5, 2018	Contingency match requirement



**Restoration Program Guidelines and Practices:**

Operation & Maintenance Plans for Stormwater Projects (RES-003)

**Background:** NCLWF requires permanent restrictions on activities and uses on land that is the footprint of stormwater BMPs that are or might be constructed with NCLWF funding, unless an acceptable alternative is available. These Guidelines and Practices are intended to be an alternative for local government units and municipal corporations that agree to maintain stormwater facilities in lieu of recording a stormwater easement.

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**Guidelines and Practices:**

A stormwater Best Management Practice (BMP) operation and maintenance (O&M) agreement may be used in place of a conservation easement.

Operation and maintenance plans for stormwater projects apply only to BMP projects for which the grant recipient is a local government, and funds from the NCLWF are used for BMP construction. Easements are no longer required if the grant recipient agrees to maintain the BMP for 10 years and prepare a BMP O&M plan.

For most applicable projects, this is accomplished via a stormwater BMP O&M plan submitted as a deliverable under the NCLWF grant agreement, consistent with the grant agreement requirement to maintain the BMP for 10 years.

This arrangement is standard for applicable projects beginning with projects resulting from 2010 grant awards. This arrangement is being used selectively on projects awarded before 2009 via grant agreement amendments.

Beginning with 2010 grant applications, projects that are eligible to use a stormwater BMP O&M plan should not propose to use a conservation easement to protect the land of the BMP and should not include the value of a donated easement in the project’s matching funds budget.

**Effective Date**

Versions	Revisions
	Original Effective Date
March 9, 2015	Reauthorized





**Restoration Program Guidelines and Practices:**

Option Agreements for Restoration Projects (RES-004)

**Background:** The NCLWF requires grant recipients to have restoration easements recorded for all buffer properties before receiving any reimbursement for restoration construction costs. Also, some of the NCLWF restoration grant contracts include recordation of restoration easements in a scope of work for preparing for construction at a later time with new funding and do not include funding construction.

The NCLWF began making option agreements available for NCLWF-funded stream restoration projects in 2010 to accomplish one or both of the following purposes:

- 1) Allow NCLWF grant recipients and riparian property owners to commit to encumbering their properties only if funding for constructing the restoration project is made available before a date specified in the option agreement (a “sunset date”); and/or
- 2) Allow NCLWF grant recipients and riparian property owners to defer committing to exact streambank and easement locations until after restoration construction has been completed.

**Guidelines and Practices:**

The NCLWF will allow option agreements as an optional intermediate step toward recording easements on stream restoration projects.

**Effective Date**

Versions	Revisions
	Original Effective Date
March 9, 2015	Reauthorized



**Restoration Program Guidelines and Practices:**

Agricultural Best Management Practices Resolution (RES-005)

**Background:** The intent of the resolution is to improve the consistency of the level of funding provided by the North Carolina Land and Water Fund for various BMP options for Soil and Water Conservation Districts and other grantees for the protection of setbacks on agricultural lands.

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RESOLUTION

**Authorizing the Funding of Several Best Management Practice Options for Soil and Water Conservation Districts and Other Grantees for the Protection of Setbacks on Agricultural Lands**

Whereas, the Board of Trustees of the Clean Water Management Trust Fund has funded a number of projects with Soil and Water Conservation Districts and other grantees for the installation of Best Management Practices (BMPs) on agricultural lands; and

Whereas, the Board of Trustees of the Clean Water Management Trust Fund will likely continue to fund such projects; and

Whereas, there is a need for consistency on the level of funding provided by the Clean Water Management Trust Fund for various BMP options,

**NOW, THEREFORE BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE CLEAN WATER MANAGEMENT TRUST FUND MEETING IN CORNELIUS ON MARCH 18, 2002:**

The Clean Water Management Trust Fund adopts the following scope of work options:

1. For landowners agreeing to permanent Conservation Easements on at least 30-foot wide setbacks on each side of the stream, the Clean Water Management Trust Fund will fund 100% of the cost of the BMP.
2. For landowners agreeing to provide a 30-year signed agreement for protection of at least 50-foot wide setbacks on each side of the stream, the Clean Water Management Trust Fund will fund 100% of the cost of the BMP.
3. For landowners agreeing to provide a 30-year signed agreement for protection of at least 30-foot wide setbacks on each side of the stream, the Clean Water Management Trust Fund will fund 85% of the cost of the BMP.
4. For livestock exclusion BMPs, the minimum setback widths and funding options listed above shall be applied to streams greater than 3-feet wide. Livestock exclusion BMPs shall include alternative watering facilities.



For livestock exclusion BMPs applied to streams 3-feet wide or less, a minimum 15-foot wide setback on each side of the stream, as measured from top-of-bank, is required and the following funding options are allowed:

- a. For landowners agreeing to permanent Conservation Easements, the Clean Water Management Trust Fund will fund 100% of the cost of the BMP.
- b. For landowners agreeing to provide a 30-year signed agreement, the Clean Water Management Trust Fund will fund 85% of the cost of the BMP.

Livestock exclusion BMPs shall include alternative watering facilities.

*Robert Woodward 3-18-02*

**Effective Date**

Versions	Revisions
March 18, 2002	Original Effective Date
June 3, 2014	Reauthorized



**Restoration Program Guidelines and Practices:**

Resolution Clarifying the Role of the NCLWF in Mitigation Projects (RES-006)

**Background:** The resolution is intended to clarify when land previously acquired with funds from the North Carolina Land and Water Fund may be used for complementary wetland, stream, and endangered species mitigation projects.

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**Resolution**

**Clarifying the Role of  
The Clean Water Management Trust Fund  
In Mitigation Projects**

Whereas the 1996 General Assembly established the Clean Water Management Trust Fund to provide incentives to help local governments, State agencies, and nonprofit conservation organizations go beyond compliance with regulations to protect and restore surface water quality; and

Whereas G.S. 113-145.4 c) sets out that "No (Clean Water Management Trust Fund) grant shall be awarded under this article to satisfy compensatory mitigation requirements under 33 USC S 1344 or GS 143- 214.11"; and

Whereas sites suitable for quality compensatory wetland, stream, and endangered species mitigation projects are difficult to find; and

Whereas finding suitable sites for mitigation projects is a significant source of delay in implementing mitigation projects; and

Whereas the Department of Transportation, the Wetlands Restoration Program, and private wetland bankers have approached some CWMTF grantees after the acquisition of riparian buffers and wetlands about mitigation projects; and

Whereas some CWMTF-funded riparian buffer and wetland projects could be further improved by restoration and enhancement; and

Whereas CWMTF grantees are prepared for permanent stewardship of these properties;


NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE CLEAN WATER MANAGEMENT TRUST FUND MEETING AT JEFFERSON LANDING ON THE NEW RIVER IN ASHE COUNTY ON SEPTEMBER 16, 2002:

The Board of Trustees approves the use of land previously acquired with funds from the Clean Water Management Trust Fund for complementary wetland, stream, and endangered species mitigation projects



provided that: 1) the mitigation project improves surface water quality, 2) the mitigation project is consistent with the purpose of the original project, and 3) the sponsor of the mitigation project will reimburse either CWMTF or its grantee for the full value, plus appreciation, of the CWMTF investment in that portion of the land to be used for the complementary wetland, stream, and endangered species mitigation so that CWMTF does not directly or indirectly subsidize the mitigation project.

The Board of Trustees directs the Executive Director to consult with the Chairman of the Acquisition Committee, and if necessary, the Acquisition Committee and Board, before approving the use of CWMTF-funded land for mitigation projects. The Board further directs the Executive Director to periodically report to the Acquisition Committee and the Board on the use of CWMTF-funded land for mitigation projects.



Robert D. Howard, Chairman

**Effective Date**

Versions	Revisions
September 16, 2002	Original Effective Date, Signed by Robert D. Howard, Board of Trustees Chairman
June 2, 2014	Reauthorized



## Restoration Program Guidelines and Practices:

### Guidelines and Practices to Allow Term Conservation Easements on Restoration Projects with In-Stream Structures (RES-007)

#### Part One - Guidelines and Practices for Term Easements on Restoration Projects

**Background:** NCLWF practice required permanent conservation easements on restoration projects, which utilize in-stream structures, with a 50-foot minimum buffer along the project area. These practices had been effective, but feedback from our partners (SWCD, Watershed Associations) was that more water quality improvement and conservation could be accomplished if a practice of term easements was established. While these guidelines are intended to be used with all restoration projects, it is anticipated that more agriculture lands would become enrolled in the program by making NCLWF practices more compatible with programs like the NC Cost Share Program and the Federal NRCS EQUIP which currently use term easements for many projects. Another anticipated benefit of making the program requirements more closely aligned is that local service providers will become more comfortable in promoting NCLWF to their customers and with the long-term monitoring of each site, thereby allowing more conservation to protect water quality.

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#### Part One Guidelines and Practices:

This Guidelines and Practices modification determines how much of the associated costs NCLWF will cover for Stream Restoration Projects with in-stream structures without requiring a permanent easement. The proposed NCLWF guidelines to accommodate term easements for restoration projects with in-stream structures are as follows:

- NCLWF would pay 100% of costs on a permanent conservation easement. (Match is the value of the buffer.)
- NCLWF would pay 70% of costs on a 50-year conservation easement.
- NCLWF would pay 30% of costs on a 30-year conservation easement.
- NCLWF would not provide funding for any restoration costs for projects with less than a 30-year term easement.

All projects would be required to have a minimum riparian buffer width of 50 feet from the top of the stream bank. If property is in agricultural usage, then any livestock must be excluded from the buffer area.

Matching funds could be cash, NC AG Cost Share or EQUIP funding for BMPs (like exclusionary fencing), or sweat equity (labor, equipment) from the landowner to supplant the shortage of NCLWF funds.

This Guideline and Practices modification applies to stream restoration projects located anywhere in the State.



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**Part Two - Guidelines and Practices for Term Easements on Restoration Projects with Match Funding from the NC Farmland Trust for Conservation Easements**

**Background:** These guidelines are for the special case of lands participating in the NC Farmland Preservation Trust (FPT) Program. The FPT was established with a goal of protection of prime agricultural lands in NC. The program purchases term conservation easements from agricultural landowners in a competitive process, much like NCLWF. FPT easements typically cover much more than the riparian area. In an effort to reach a broader population of the agricultural community and thus protect more farmland, the program has established a schedule and payment structure for term easements. Once a farm is enrolled in the Ag Trust and NCLWF funds are used to restore stream buffers and stabilize eroding streambanks, there is minimal incentive to disturb the restoration work after the easement expires and there is the possibility that the landowner may place the property in a permanent easement later after expiration of the FPT term. The FPT program has established the following guidelines for purchase of term conservation easements:

- Will pay 60% of the value of a conservation easement for a 50-year term.
- 40% of the value for a 40-year term easement
- 30% of the value for a 30-year term easement
- 20% of the value for a 20-year term easement
- 10% of the value for a 10-year term easement

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**Part Two Guidelines and Practices:** If a NCLWF project is associated with a Farmland Preservation Trust easement, then the following structure for grants will apply:

- NCLWF will pay 80% of restoration project cost when coupled with a 50-year Farmland Preservation Trust term easement.
- NCLWF will pay 65% of restoration project costs when coupled with 40-year FPT term easement.
- NCLWF will pay 50% of restoration project costs when coupled with 30-year FPT term easement.
- NCLWF will not provide funding for any restoration costs for projects with a FPT easement term of less than 30 years.

NCLWF percentages are shown as higher for projects with a longer-term easement to reward and encourage the longer-term commitment. The two programs (NCLWF and FPT) would be additive for a project, which means that the landowner would receive a direct payment from FPT for the value of the land placed under the term easement. NCLWF would also fund construction of restoration work at the appropriate percentage based upon the length of the term easement.



**Example:** Farmer Brown agrees to a 40-year term easement with FPT and receives a direct payment equal to 40% of the appraised land value. The local SWCD has also applied to NCLWF for restoration work on Farmer Brown’s stream with a 40-year term easement. If the project is funded it would qualify for a NCLWF grant equal to 65% of the total cost of installation of the project (including design, permitting, construction, etc.). The applicant (SWCD) is responsible for the 35% matching funds for the project. Thus, Farmer Brown gets a direct payment from FPT, while NCLWF will indirectly finance the restoration work on his property through the SWCD.

All projects will be required to have a minimum riparian buffer width of 50 feet from the top of the stream bank. Any livestock must be excluded from the buffer area.

Matching funds may be cash, NC AG Cost Share or EQUIP funding for BMPs (like exclusionary fencing), or sweat equity (labor, equipment) from the landowner to supplant the shortage of NCLWF funds.

These Guidelines and Practices applies only to those NCLWF projects located on property that is covered by a FPT conservation easement.

**Effective Date**

Versions	Revisions
June 3, 2014	Original Effective Date





**Restoration Program Guidelines and Practices:**

Guidelines and Practices to Allow Award of Funding for Stewardship of Restoration Easements (RES-008)

**Background:** When NCLWF funds a stream restoration project, the grantee is required to record a conservation easement over the restored segment of stream to protect the State’s investment. The grantee is obligated to monitor the easement for compliance, which has costs associated with the project in perpetuity. These Guidelines and Practices allow for lump sum payment to the grantee under certain circumstances to assist with the ongoing stewardship cost.

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**Guidelines and Practices:**

For restoration projects where conservation easements meet or exceed NCLWF guidelines and where a certified land trust organization has agreed to steward the easements in question, applicants may request up to 50% of endowment funds established to monitor the project easements in perpetuity. If awarded, stewardship funds provided by the applicant organization must be deposited into a stewardship endowment before receiving funds from NCLWF.

**Effective Date**

Versions	Revisions
February 28, 2018	Original Effective Date



## Donation Mini-Grant Program Guidelines And Practices

The Donation Mini-Grant Program includes the acquisition of land for certain purposes outlined in G.S. § 143B-135.234 (c), including:

- To acquire land for riparian buffers for the purposes of providing environmental protection for surface waters and drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses.
- To acquire conservation easements or other interests in real property for the purpose of protecting and conserving surface waters and enhancing drinking water supplies, including the development of water supply reservoirs.
- To coordinate with other public programs involved with lands adjoining water bodies to gain the most public benefit while protecting and improving water quality.
- To prevent encroachment, provide buffers, and preserve natural habitats around military installations or military training areas, or for State matching funds of federal initiatives that provide funds to prevent encroachment, provide buffers, and preserve natural habitats around military installations or military training areas.
- To acquire 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.
- To acquire land that contributes to the development of a balanced State program of historic properties.
- To protect and restore floodplains and wetlands for the purpose of storing water, reducing flooding, improving water quality, providing wildlife and aquatic habitat, and providing recreational opportunities.



## Donation Mini-Grant Program Guidelines and Practices:

### Donation Mini-Grant Program Procedures and Requirements (DMG-001)

#### Background:

The NCLWF Board of Trustees (Board) first established the Donated Easement Program in 2003 with the goal of facilitating the donation of conservation easements to conservation nonprofits or local governments by reimbursing grant recipients for transaction and stewardship endowment costs up to \$25,000. The conservation nonprofit or local government holds the conservation easement in perpetuity, subject to rights of the State to enforce the easement. Applications were and continue to be accepted year-round and funded at least quarterly with available funds from an allocation recommended by the Acquisition Committee and approved by the Board.

In 2014, the Board expanded the program to facilitate the donation of fee simple absolute interests in property, provided all donated properties were protected by a perpetual conservation agreement, such as conservation easement, declaration of covenants and restrictions, or dedication under the State's Nature Preserves Act. State government agencies without dedicated land acquisition funding mechanisms were also added as eligible applicants. The program was renamed the Donated Mini-Grant Program to reflect the expanded purposes.

Prior to 2023, the guidelines of the program were documented in annual application manuals provided to grant applicants. The intent of DMG-001 is to change the program name to the Donation (as opposed to Donated) Mini-Grant (DMG) Program and to document the program in the Guidelines and Practices Manual.

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#### Guidelines and Practices:

1. Nonprofits, local governments, and State agencies are eligible to apply to the DMG Program to accept the donation of a conservation agreement and/or fee simple absolute interest.
2. The acquisition of the conservation agreement or fee simple absolute interest must be an absolute donation. As such, no funds will be reimbursed to the Grant Recipient for acquisition.
3. All property must be restricted to protect natural, historic, or cultural features. Restrictions may include conservation easements, declarations of covenants and restrictions, or dedication under the Nature Preserves Act. Restrictions not held by the State shall grant the State third-party rights of enforcement.
4. The total maximum amount for reimbursement is \$50,000 per award.
5. The value of the donation must be greater than the requested funds.
6. The value of the donation, as determined either by appraisal or tax value of the land, must be included as matching funds. The value of structures must be excluded from the appraisal. Appraisals do not require review by the State Property Office. When tax value is used in lieu of appraisal, up to 100% of the value may be claimed for fee donations and 80% of the value may be claimed for conservation easement donations.
7. Appraisals may only be reimbursed if the Grant Recipient is required to have an appraisal and the Grant Recipient can substantiate that there is no deduction being taken for the project. Appraisals to support State or Federal tax incentives are not reimbursable.
8. Other reimbursable and match budget items may include:
  - Transaction costs, including survey, boundary marking, baseline documentation report, legal fees, title opinion, commitment and/or policy, Environmental Site Assessment, and transaction screen.



- Administrative costs up to 10% of the total transaction costs, per the requirements of MPP-001 Administrative Costs and Caps for Grant Contracts.
  - Property management costs that do not exceed \$5,000, per the requirements of ACQ-007 Property Management Costs.
9. When a land trust nonprofit with a dedicated stewardship endowment will steward and monitor the donation in perpetuity, the Grant Applicant may request up to 50% of stewardship endowment funds.

**Effective Date**

Versions	Revisions
November 18, 2003	Original Effective Date
December 4, 2023	Updated



**Donation Mini-Grant Program Guidelines and Practices:**

Donation Mini-Grant Program Administrative Approval (DMG-002)

**Background:**

Since September 2014, the Donation Mini-Grant (DMG) Program has operated using an administrative approval system, in which the NCLWF Board delegated approval authority to the Board Chair to expedite donations outside of the standard grant cycle. Administrative approval was reaffirmed as part of the DMG funding motion approved at the September 20, 2023, meeting of the Board.

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**Guidelines and Practices:**

1. Authority to approve DMG Program awards is delegated to the Board Chair. Applications will be considered on a schedule set by NCLWF staff based on annual demand. The date of approval by the Board Chair will be the effective Award Date of the grant.
2. Regardless of this delegation, the Board Chair may elect to seek approval of an application from the Acquisition Committee. In such instances, the date of approval by the Acquisition Committee will be the effective Award Date of the grant.
3. The Expiration Date of grants made via administrative approval by either the Board Chair or Acquisition Committee shall be no more than 12 months from the Award Date. NCLWF staff may elect to approve one six-month extension of the Expiration Date. All other extension requests must be approved by the Board through a recommendation from the Acquisition Committee.

**Effective Date**

Versions	Revisions
December 4, 2023	Original Effective Date



# Stewardship Program Guidelines and Practices



## Stewardship Program Guidelines and Practices:

### Conservation Agreement Amendment Guidelines and Practices (STW-001)

**Background:** On rare occasions, permanent conservation agreements may need to be modified or amended. These guidelines were established and approved by the Board to provide a consistent and predictable process for these cases.

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#### Guidelines and Practices:

The North Carolina Land and Water Fund (NCLWF) was established in 1996 primarily to protect water quality interests in the State. In 2013, the purpose of the NCLWF was expanded to include protection of natural heritage resources, historic and cultural resources, and buffers to military bases. In addition, with the dissolution of the Natural Heritage Trust Fund (NHTF) in 2013, the NCLWF became the de facto appointed body for matters that would have previously gone before the NHTF. Therefore, this document pertains to changes to conservation agreements initially entered into by either of the aforementioned funds and potential impacts to the conservation values protected by those agencies.

When the NCLWF Board of Trustees (NCLWF Board) elects to fund a land protection project, there are three conservation strategies in which the State retains an interest in perpetuity: 1) State-held conservation easements, 2) declarations of covenants and restrictions, and 3) dedications under either the State Nature Preserves Act or the State Nature and Historic Preserve Dedication Act. The NCLWF strives to design these instruments, hereafter referred to broadly as “conservation agreements,” to avoid the need for an amendment or modification of the agreed upon terms. It is the State’s presumption that conservation agreements will not be amended or modified. Amendments may only be approved in exceptional cases or due to unforeseen circumstances provided the procedures outlined below are met.

Because every property and project are unique, no decision by the NCLWF Board with respect to an amendment of a conservation agreement, either granting or denying, shall form a precedent with respect to any other request for an amendment. Although these amendment guidelines set forth certain procedures and expectations, nothing herein shall diminish the sole and absolute authority of the NCLWF Board. An amendment is an extraordinary procedure and not available to a landowner as a matter of right. All amendments must comply with applicable federal, State, and local laws.

- I. **Minor Amendments** – These amendments, as described below, have been deemed to be small in scale or impact, and the NCLWF Board has delegated consideration and potential approval to staff. However, the Executive Director may choose to elevate any Minor Amendment to a Major Amendment, which would then be subject to the procedures set forth in Section II.
  - A. Technical amendments or corrections – Adjustments to correct a clerical error in the language of a conservation agreement resulting in no impact on the conservation values may be approved at the staff level.



- B. Amendments to accommodate public works projects – Adjustments to conservation agreements to accommodate public works projects may be approved at staff level under the following conditions:
1. The project can be effectively accomplished with the addition of a reserved right and there is no surface impact (e.g., projects utilizing horizontal directional drilling) or surface impacts are minimal and can be sufficiently mitigated (e.g., plant rescue or restoration of temporary construction easements). This assumes that there are no measurable impacts to other conservation values.
  2. Changes to spatial boundaries may be considered and can be approved at the staff level if all of the following conditions are met:
    - a. The change would affect less than one acre or 5% of the conservation agreement area, whichever is smaller.
    - b. The project would be perpendicular to or a minimal distance parallel to surface waters if any riparian buffers are affected.
    - c. The project would have no significant impact on other conservation values except in cases where impacts can be fully mitigated by a plant rescue or other operation. Determination of conservation impact will be subject to the Conservation Benefit Analysis outlined in Section III of these guidelines.
- C. Addition of standard reserved rights – The reserved rights listed below are considered to be standard allowances and any addition(s) may be considered and potentially approved at the staff level if the following conditions are met:
1. Requested rights adhere to all other NCLWF policies and procedures; requests for addition of trail rights shall be subject to the NCLWF Natural Surface Trails guidelines.
  2. The intent of the original conservation agreement does not explicitly indicate a desire to prohibit the requested rights.
  3. Standard reserved rights eligible for NCLWF staff consideration and approval include the following:
    - natural surface trails for hiking
    - paved trails (such as greenway or universal access trails) including footbridges and trail amenities
    - native community restoration, management, and maintenance
    - stream and wetland restoration
    - hunting and fishing





- maintenance of existing roads and trails
- vegetation management limited to boundary marking, fencing, signage, fire containment, insect and disease control, hydrology restoration, wetland enhancement, control of invasive exotic plants, and removal of trees that pose a threat to life or property
- use of motor vehicles limited to the purposes of monitoring, management, stewardship, universal access, and emergencies

All other amendment requests not covered under Section I are considered to be Major Amendments and must be taken to the NCLWF Board for consideration per Section II.

- II. **Major Amendments** – All amendment requests not explicitly covered above must be considered by the NCLWF Board. Affirmation by a two-thirds vote is required for approval.
- A. Public Works Projects – Amendment requests to accommodate public works projects that are not covered in Section I may be approved by the NCLWF Board.
  - B. Public Drinking Water Supply Reservoir – After the Record of Decision has been issued (final location has been permitted), a conservation agreement or portions of a conservation agreement may be amended by the Board for development of a public drinking water supply reservoir.
  - C. Other Circumstances – All requests for amendment of conservation agreements for circumstances not covered above must meet the following criteria:
    1. Clearly serves the public interest and provides a public or community benefit
    2. Has a net positive benefit on the conservation values, as determined by the Conservation Benefit Analysis outlined in Section III of these guidelines, regardless of agreement recording date
    3. Does not result in impermissible private benefit (as verified by appraisal if deemed necessary by the NCLWF). The Board may choose to approve an amendment request if and when the public benefit significantly outweighs any potential private benefit
    4. Is consistent with the conservation purpose(s) and documented intent of the conservation agreement
    5. To the extent verifiable, is consistent with the documented intent of the donor(s), other grantors, and any direct funding source
    6. Demonstrates that no practicable alternative(s) exist and that any impacts have been minimized

- III. **Conservation Benefit Analysis** – The following outlines the process for conducting a conservation benefit analysis as required by NC G.S §121-39.1. Termination or modification of agreements.

Though this statute does not apply to agreements recorded prior to 2015, NCLWF staff will conduct a conservation benefit analysis for all amendment requests. When another State agency is authoring a request to the State Property Office and Council of State for a conservation agreement modification or termination, the agency requesting the modification or termination shall conduct and submit a conservation benefit analysis as required.



A. Review of Resources

1. NCLWF staff will conduct desktop GIS analysis of potential impacts to streams, wetlands, natural heritage element occurrences and natural areas, historic sites, and any other conservation values identified by the conservation agreement using the North Carolina Natural Heritage Data Explorer, the North Carolina State Historic Preservation Office's HPOWEB mapping application, and other relevant data sources.
2. NCLWF staff will identify and consult with appropriate experts to determine potential impacts of the requested amendment on identified resources.
3. NCLWF staff and other experts as appropriate will conduct site visits for all major amendment requests and any requests that include proposals for exchange of land.

B. Analysis of Impact

1. After review, NCLWF staff will analyze all impacts to existing conservation values and the proposed benefits of the request.
2. The proposal may be deemed to have a net positive conservation benefit if the offset, whether by land exchange or monetary compensation, outweighs the impacts to the conservation agreement and values.

IV. **Approved Amendment Requirements** – The following outlines the expectations for approved amendments:

- A. Offset of Conservation Impacts – The NCLWF must be made whole from any loss of monetary or conservation value resulting from an amendment. Proposals for offset should be discussed with NCLWF staff and submitted along with any amendment request.

Exchange of land is preferred to monetary compensation unless deemed impractical. Any proposed exchange of land should be at least three times the acreage of the impact area, of like conservation value as determined by the resource score of the current NCLWF Application Rating System, and at least equal in monetary value. Proposed exchange land must be restricted to a level equal to or greater than the original conservation agreement. For easements, a qualified easement holder must be specified and the NCLWF must be granted third-party right of enforcement. It is the NCLWF's preference that any new easements on land acquired as the result of an amendment be held by an accredited land trust. In the event that a qualified easement holder cannot be found, other options may be considered. Where no other suitable options exist, the State may serve as the holder provided that all current NCLWF standards for easement closings are followed, perpetual stewardship costs are provided and deposited in the NCLWF Stewardship Endowment, and an eligible easement monitor is identified.

In the case of an amendment required in lieu of the State's or a municipality's power to take private property for public use, the NCLWF may elect to be reimbursed, at minimum, the current fair market value, as determined by appraisal, tax value, and/or NCLWF staff, or pro-rated amount of the investment at the time of the grant contract, whichever is greater. In other cases where the approval of the amendment is solely at the Board's discretion, the terms of compensation, whether monetary or by land exchange, should be generously to the favor of the NCLWF and its conservation interests by a ratio of at least 3:1.



Funds reimbursed to the NCLWF from a conservation agreement amendment will be allocated to an appropriate program area as determined by the Board.

- B. Other costs – All costs associated with the amendment, including survey, appraisals, other transaction expenses, increased stewardship, review by State agencies, and any fees charged by the State Property Office, will be paid by the party making the amendment request.
- V. **Amendment Request Requirements** – The following outlines the minimum required information for amendment requests, although additional information may be requested as needed:
  - A. Name, address, phone number, and email address of the property owner
  - B. Nature of the activity proposed to be conducted
  - C. Location of the activity with reference to the NCLWF project number and/or Deed book and page
  - D. Map(s) of sufficient detail to accurately delineate the boundaries of the land proposed to be impacted to carry out the activity, including the location and dimensions of any disturbance associated with the activity. When possible, a GIS shapefile must be submitted
  - E. Explanation of why the plan for this activity cannot be practically accomplished, reduced, or reconfigured to avoid the need to amend the conservation agreement, or alternatively to better minimize disturbance to the conservation area and its identified conservation values
  - F. Plans for any best management practices or restoration practices to be used to control the impacts associated with the activity
  - G. Acknowledgement of receipt of a copy of the NCLWF Conservation Agreement Amendment Guidelines and Practices.
- VI. **Notifications** – The following parties will be notified by NCLWF staff at least two (2) weeks before a scheduled Board or committee discussion for Major amendments or staff decision for Minor Amendments:
  - A. The original parties associated with the conservation agreement that is proposed to be amended
  - B. The contracted easement monitor, when applicable
  - C. The general public and other interested parties via notice posted to the NCLWF website

Versions	Revisions
July 10, 2013	Original Effective Date
September 16, 2014	Revised and Adopted
March 9, 2015	Revised and Adopted
September 14, 2016	Revised and Adopted
May 21, 2019	Revised and Adopted
May 16, 2023	Revised and Adopted



**Stewardship Program Guidelines and Practices:**

Stewardship Endowment Funds Use (STW-002)

**Background:** Beginning in 2004, State-held conservation easements received funds to be held in the Stewardship Endowment, to generate funds for easement monitoring by partner organizations, a perpetual obligation established in the easement. As of 2010, Funds have also been approved for management activities that protect and enhance the conservation values of these easements.

The purpose of the following guidelines is to outline the process for setting annual expenses from the endowment, and to formalize all Board-approved uses of the endowment fund, within its statutory boundaries.

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**Guidelines and Practices:** The Board will authorize the disbursement of endowment investment income annually at the spring board meeting. Endowment investment income spent in a given year will not exceed 4% of the total value of the endowment, defined as the 36-month average ending March 31 of the current year. The Board delegates staff the authority to use the approved disbursed funds for annual conservation easement activities described below, in order of priority:

1. Annual monitoring and associated incidental expenses of State-held easements through contracts with organizations identified in conservation easements as obligated to monitor on the State’s behalf.
2. Stewardship management funds requested for projects that will protect or enhance the conservation values of a State-held easement. Individual expenses cannot exceed \$5,000 per easement per year and cannot be requested to remediate a violation of the conservation easement, except in the case of third- party violation.
3. Miscellaneous stewardship management and administrative activities that may fall outside the scope and timeline of annual monitoring contracts and stewardship management awards. Individual expenses cannot exceed \$5,000 and shall be approved by the Executive Director or designee.

In the event that insufficient funds are available to cover all activities, available funds shall be spent on annual monitoring of State-held easements.

All expenses will be summarized and presented to the Board at the spring meeting.

**Effective Date**

Versions	Revisions
September 16, 2014	Original Effective Date
May 21, 2019	Revised and Adopted



**Stewardship Program Guidelines and Practices:**

Board Resolution to Establish Endowment (STW-003)

**Background:** This resolution was passed by the board to provide support for pursuing necessary legislation and direction for staff to establish the Stewardship Program as it exists currently.

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**Resolution:** Sense of the Board of Trustees of the Clean Water Management Trust Fund Regarding Stewardship of Conservation Easements

The Board recognizes that stewardship and management of conservation easements are essential to protect both water quality and the public’s investment.

The Board is committed to providing adequate funds for stewardship of permanent conservation easements.

The Board appreciates and supports the work of land trusts and other grantees that receive Clean Water Management Trust Fund stewardship funds in monitoring and stewarding permanent conservation easements.

The Board desires to increase accountability and control of the funds that the Clean Water Management Trust Fund provides to land trusts and other grantees that receive Clean Water Management Trust Fund stewardship funds for stewardship.

The Board will not provide any new stewardship funds directly to land trusts and other grantees that receive Clean Water Management Trust Fund stewardship funds to be managed as private endowments.

The Board supports legislation authorizing establishment of a Clean Water Management Trust Fund Stewardship Endowment Fund as a nonreverting special revenue fund in the 2005 General Assembly.

The Board directs CWMTF staff and land trusts and other grantees that receive Clean Water Management Trust Fund stewardship funds to work together to address concerns raised by land trusts and other grantees that receive Clean Water Management Trust Fund stewardship funds and to report back to the Board in 2005.

**Effective Date**

Versions	Revisions
July 11, 2005	Original Effective Date



## Stewardship Program Guidelines and Practices:

### Board Resolution to Invest Endowment (STW-004)

**Background:** In 2008, legislative changes to the statute language permitted NCLWF to utilize a broader range of investment tools for its endowment. After meetings with staff and representatives from the State Treasurers Office, the Board deliberated and passed the following guidelines.

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#### Resolution:

RESOLUTION OF THE BOARD OF TRUSTEES OF THE NC CLEAN WATER MANAGEMENT TRUST FUND DECLARING OFFICIAL INTENT TO INVEST FUNDS OF THE NC CONSERVATION EASEMENT ENDOWMENT FUND WITH THE NORTH CAROLINA STATE TREASURER PURSUANT TO NCGS SECTION 147-69.2

THE BOARD OF TRUSTEES OF THE NC CLEAN WATER MANAGEMENT TRUST FUND HEREBY FINDS, DECLARES AND RESOLVES AS FOLLOWS:

WHEREAS, the North Carolina Conservation Easement Endowment Fund ("Endowment") was established by North Carolina General Statute ("NCGS") I 13A-253.2 on July 16, 2008; and

WHEREAS, the Clean Water Management Trust Fund ("CWMTF") Board of Trustees authorized initial investment of the Endowment with the NC State Treasurer in the Long-Term Investment Fund ("LTIF"); and

WHEREAS, the Equity, Long-Term and Short-Term Fixed Income Funds ("Funds") pursuant to NCGS Section 147-69.2-consists of contributions made by local governments, public authorities and other entities authorized to make contributions to the Funds, which contributions are subject to the withdrawal terms of the Funds; and

WHEREAS, the Endowment is listed as an eligible participant in the Funds on line I 7i of NCGS Section 147-69.2; and

WHEREAS, the CWMTF Board of Trustees has reviewed the Funds and the investment options available with the NC State Treasurer.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE NC CLEAN WATER MANAGEMENT TRUST FUND (THE "BOARD") BY A MOTION PASSED BY A MAJORITY AT THEIR MEETING AT THE NORTH CAROLINA RURAL ECONOMIC DEVELOPMENT CENTER IN RALEIGH, NORTH CAROLINA ON FEBRUARY 13, 2012:

The Board authorizes diversifying the investment of the Endowment into equity, long term and short term investments as a prudent investment strategy; and

The Board acknowledges and approves the investment of the Endowment with the North Carolina Department of State Treasurer in the Funds (the "Investment") pursuant to the terms and conditions of a deposit agreement for investment in public equity, long term and short term fixed income ("Agreement") between NCLWF and the NC State Treasurer; and



The Board authorizes the CWMTF Board of Trustees Chair ("Board Chair"), the CWMTF Board Stewardship Committee Chair, and any appropriate officers, managers and representatives of CWMTF designated by the CWMTF Board Chair ("Authorized Representatives") to finalize said terms of the Agreement with the Treasurer in a manner consistent with action by the Board of Trustees as this meeting and to execute and deliver the Agreement, to take any other actions deemed necessary or appropriate to consummate the transactions provided for therein, and to cause the investment to be made; and

The Board acknowledges that all actions heretofore taken by any of the Authorized Representatives of CWMTF acting on behalf of CWMTF in furtherance of the foregoing resolutions are hereby ratified, adopted, approved and confirmed in all respects; and

The Board acknowledges that the Authorized Representatives of CWMTF acting on behalf of CWMTF are hereby authorized to take all such other actions as they may deem necessary or appropriate to give effect to the forgoing resolutions.

**Effective Date**

<b>Versions</b>	<b>Revisions</b>
February 13, 2012	Original Effective Date



**Stewardship Program Guidelines and Practices:**

NC Conservation Easement Endowment Fund Deposit Agreement (STW-005)

**Background:** The following agreement outlines the terms and conditions under which the NCLWF Board and the Office of the State Treasurer will manage operations regarding the endowment.

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**Agreement:**

**North Carolina Department of State Treasurer  
Deposit Agreement for Investment in Ancillary Governmental Participant Investment Program  
("AGPIP")**

**Equity Index Fund Pursuant to N.C.G.S. § 147-69.2(b) (8)  
Bond Index Fund Pursuant to N.C.G.S. §§ 147-69.2(b)(1)-(6)  
and/or**

**Short-Term Investment Fund Pursuant to N.C.G.S. §§ 147-69.1(c) and 147-69.2(b)(1)**

WHEREAS, pursuant to the North Carolina General Statutes, certain public entities that are not part of the North Carolina Retirement System, each an Ancillary Governmental Participant ("Participant" or "Applying Entity"), may deposit monies ("Monies") with the Treasurer of the State of North Carolina ("Treasurer"), who in turn will invest the Monies.

WHEREAS, pursuant to N.C.G.S. §§ 147-69.2(b2), 147-69.2(b4), 147-69.2(b5), or 147- 69.2(d), or 147-69.5 or other such enabling legislation authorizing Participant to invest in AGPIP, certain Participants are authorized to direct the Treasurer as to the allocation of their investments;

WHEREAS, each Participant is exempt from federal income tax under Section 115 of the Internal Revenue Code of 1986 ("Code"), as amended, and the Constitution of the United States as an organization performing an essential government function or as an organization owned by an instrumentality of the State of North Carolina;

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, the parties hereto agree as follows:

Section 1. General. The undersigned Participant understands, agrees, and acknowledges that it may deposit Monies from time to time with the Treasurer. Subject to the restrictions of the Participant's enabling legislation limiting the Participant's investment options, these Monies may be held and invested in one or more of the following: (i) a portfolio of primarily equity securities ("Equity Index Fund" or "EIF") as permitted by N.C.G.S. § 147-69.2(b)(8); (ii) a portfolio of fixed income instruments ("Bond Index Fund" or "BIF") as permitted by N.C.G.S. §§ 147-69.2(b)(1) through (6) and/or (iii) certain other fixed income instruments as permitted by N.C.G.S. § 147-69.2(b)(1) ("Short-Term Investment Fund" or "STIF").





The undersigned Participant understands and acknowledges that investments in the EIF are to be effected through investments made by the Treasurer in individual, common, or collective trust funds of banks, trust companies, and group trust funds of investment advisory companies as long as the investment manager has assets under management of at least \$100 million. The trustee of each such third-party trust (“Third-party Trustee”) shall be appointed by the Treasurer. The undersigned Participant further understands and acknowledges that investments in the BIF are effected through third-party investment management, custodial, and brokerage arrangements. The STIF is to be managed internally by the Treasurer and utilizes third-party custodial and brokerage arrangements.

The undersigned Participant understands, agrees and acknowledges that if the Participant is a Local Government Other Post-Employment Benefits Trust (“OPEB Trust”) established pursuant to N.C.G.S. § 150-30.1 or Local Government Law Enforcement Officer Special Separation Allowance Trust (“LEOSSA Trust”) established pursuant to N.C.G.S. §§ 147-69.5 and 159-30.2, the Participant has established an irrevocable trust by resolution or ordinance of the entity’s governing board. The resolution or ordinance states the purpose for which the OPEB Trust or LEOSSA Trust is created and the method for determining and selecting the trustees.

Section 2. Representations and Warranties. As a condition to its investment, the Participant acknowledges, represents, warrants and agrees that:

- a) The Participant recognizes that it is indirectly investing in equity securities (if the Participant is eligible for the EIF), debt instruments (if the Participant is eligible for the BIF) and/or short-term fixed income investments. BIF, EIF, and/or STIF may lose money over short or long periods of time as they are not bank deposits, are not guaranteed by the State of North Carolina, the Treasurer, or any private sector entity, and may lag the rate of inflation. Neither BIF, EIF, nor STIF is necessarily a complete investment program and returns may lag the returns of a balanced portfolio with comparable risk. BIF and EIF provide only limited liquidity and, Monies invested in the BIF and EIF should not be needed for immediate disbursement. The Participant recognizes that investments in EIF, BIF, and/or STIF are subject to, among other things: general equity and bond market investment risks (including, but not limited to, the risk of the loss of capital); investment manager risk (including, but not limited to, the risk that poor security selection by the manager will cause the investment to underperform relevant to benchmarks or other investments with similar objectives); interest rate risks; credit risks (including, where applicable, custodial credit risks, which is the risk that in the event of the failure of the counterparty, the Treasurer will not be able to recover the value of its investments or collateral securities that are in the possession of an outside party); pre-payment risk; foreign equity risk; emerging market risk; and derivatives risk.
- b) The Participant has taken full cognizance of and understands all of the risk factors, including transition risk, related to investments in EIF, BIF and/or STIF, as applicable.
- c) The Participant is able to bear the economic risk of investments in EIF, BIF and/or STIF, as applicable.
- d) The Participant has such knowledge and experience in financial and business matters that the Participant is capable of evaluating the merits and risks of an investment in the EIF, BIF and/or STIF.



e) The Participant is solely responsible for determining the suitability of and the statutory authorization of the allocation of its investment between any of the EIF, BIF, and/or STIF, as applicable. The initial allocation shall be made on the form set forth in Appendix A attached hereto and the signatory of such form is a duly authorized representative of the Participant. Allocations thereafter shall be set forth on the deposit/withdrawal/transfer form as set forth in the sample form in Appendix B to be signed on an ongoing basis by a duly authorized representative of the Participant. The Participant acknowledges that the Treasurer shall not rebalance the Participant's allocation on an ongoing basis in order to maintain the initial percentage allocation made by the Participant. The Participant shall be responsible for reviewing its monthly statements to determine if a rebalance is necessary and shall direct the Treasurer if such rebalance is to be effected. The Participant is responsible for directing the Treasurer as to the source and manner of any rebalance.

f) The Participant acknowledges that its investment in the EIF, BIF and/or STIF, as the case may be, is permissible under the Participant's North Carolina statutory authority, is suitable for the Participant based upon its other securities holdings, financial situation, liquidity requirements and that the Participant has adequate means of providing for possible contingencies.

g) The Participant understands that it is not permitted to sell, transfer, or assign any of its investment. In order to liquidate its investment, the Participant will be required to follow the procedures described in Section 4 of this Deposit Agreement. The Participant understands and acknowledges that the Treasurer will use reasonable efforts when transferring money from one investment to another and that the risk of any decline in the value of an investment in EIF, BIF and/or STIF during the interval between any permitted withdrawal date, as further described in Section 4 of this Deposit Agreement, is borne by the Participant.

h) The Participant acknowledges, represents, warrants and agrees that the Treasurer may at any time in its sole discretion change requirements for deposits, withdrawals, and transfers applicable to Participant accounts should the Treasurer in good faith determine that such changes would be in the collective interest of the EIF, BIF, and/or STIF.

i) Further, the Participant acknowledges, represents, warrants and agrees that (i) it is exempt from federal income tax under Section 115 of the Code and the Constitution of the United States as an organization performing an essential government function or as an organization owned by an instrumentality of the State of North Carolina; (ii) the investment by the Participant described herein has been duly authorized by all necessary corporate action of the Participant; (iii) the Participant has the requisite corporate power and authority to execute and deliver this document and to deposit the Monies for investment as described herein; (iv) for any Participant authorized to invest with the Treasurer in the EIF, the Treasurer has the power and authority under N.C.G.S. § 147-69.2(b)(8) and applicable law to appoint a Third-party Trustee or Third-party Trustees to hold the monies and assets of the Participant.

j) The Participant acknowledges that the furnishing of this Deposit Agreement and the Enrollment Packet for the BIF, EIF and STIF is not intended to constitute investment advice or the offering of an



investment product. The Treasurer is undertaking the statutory responsibility set out in N.C.G.S. 147-69.3. There is no agreement or understanding between the Treasurer and any Participant under which the latter receives advice from the Treasurer concerning investments which are to be used as a primary basis for the Participant's investment decisions relating to BIF, EIF, or STIF.

k) The Participant acknowledges that: (1) the BIF, EIF, and STIF can have liquidity limitations, volatility of returns, and risk of loss, including the potential for loss of the principal invested; (2) that Treasurer is not providing investment advice to the Participant; (3) that investing in the BIF, EIF of STIF is only suitable for participants who are willing to bear the economic risks of the investment; (4) that the participant will carefully review and consider all potential risks and costs before enrolling and investing.

l) The undersigned understands and acknowledges that the Treasurer has the discretion, without prior notice, to make changes to the EIF and BIF, including but not limited to external manager, fees, investment policy or strategy.

m) The Participant acknowledges and represents that it (i) is not subject to any sanctions administered or enforced by the United States Office of Foreign Assets Control, the United Nations Security Council, the European Union, or other relevant sanctions authority; and (ii) has not and will not transfer funds into an account which have been derived from activities subject to sanctions administered or enforced by the United States Office of Foreign Assets Control, the United Nations Security Council, the European Union, or other relevant sanctions authority.

n) The Participant acknowledges and represents the following (check the correct box in (i) and (ii)):

i) The Participant IS /  IS NOT a "Municipal Entity" as that term is defined under the Municipal Advisor Rules (Section 15B of the Securities Exchange Act of 1934, as amended, and the applicable rules thereunder (Rule 15Ba1 et. seq.)).

ii) The Participant has information concerning the source of the Monies and confirms that:

A.  None of the Monies constitutes "Proceeds of Municipal Securities" or "Municipal Escrow Investments" as those terms are defined under the Municipal Advisor Rules;

OR

B. Some or all of the Monies constitutes "Proceeds of Municipal Securities" or "Municipal Escrow Investments" as those terms are defined under the Municipal Advisor Rules.

o) The Participant will notify the Treasurer immediately if it has reason to believe that the foregoing acknowledgements, representations, warranties and agreements may cease to be true. The Participant acknowledges, represents, warrants and agrees that the Treasurer may at any time in its sole discretion make a mandatory payout of Participant accounts should the Treasurer in good faith



determine that such a payout would be in the collective interest of the EIF, BIF, and/or STIF, or if a Participant has breached the requirements herein.

**Section 3. Fees.** The Participant acknowledges, represents, warrants and agrees that fees, expenses, and charges will be deducted from their accounts by the Treasurer. As permitted by N.C.G.S. § 147-69.3(f), the Treasurer may apportion the reasonable costs of administration, management, and operation directly among each of the EIF, BIF, and STIF and such costs will not be itemized at the Participant level. Such costs may include without limitation internal and external investment management and administrative fees and expenses.

**Section 4. Deposits and Withdrawals.** In order for entities to participate in AGPIP, they must open a STIF Account with the State Treasurer (if they do not already have one) and fund the account. The STIF account is used to move monies into and out of the investments in BIF and/or EIF (if eligible). STIF deposits must be made by 10 a.m. to receive same day credit, otherwise, credit will be made the following business day. Additional information regarding the establishment of a STIF account can be found at <https://www.nctreasurer.com/fod/Resources/BankingHandbook.pdf>.

- a) **Minimum Account Balance.** The minimum balance to open a new account in either BIF or EIF will generally be \$100,000 in each account. The Treasurer reserves the right to establish a de minimis account value, close Participant accounts below such de minimis value, and transfer the proceeds of applicable Participant account balances to their STIF account.
- b) **Procedures for Deposits and Withdrawals.** Once all the required enrollment documents have been completed, received, and eligibility for BIF/EIF has been confirmed and the elected accounts opened, the Participant should email a deposit and withdrawal form to AGPIP@nctreasurer.com for all accounts. BIF/EIF transactions can only be made once a month and must be submitted no later than 5 business days prior to the end of the calendar month. Transactions received 5 business days prior to the end of the calendar month will be processed on the last business day of the month and monies will be available the second business day of the next month. Should the BIF/EIF deposit and withdrawal form be received in less than five (5) business days prior to the month end, the participant must submit a new deposit/withdrawal form for the next month five (5) business days prior to the end of the calendar month.
- c) **Transfers or reallocations between STIF, BIF and or EIF.** Transfers/reallocations between investments in STIF, BIF and or EIF are permitted, subject to all of the limitations on deposits, withdrawals and other procedural requirements provided in this Section4.
- d) **A deposit and withdrawal form is not effective until it is confirmed in an email from the Treasurer to the Participant.** The Participant is responsible for contacting the Treasurer if it does not receive a confirmation email.

**Section 5. RELIANCE BY THIRD-PARTY TRUSTEES.** THE PARTICIPANT EXPRESSLY AGREES THAT ALL OF THE ACKNOWLEDGEMENTS, REPRESENTATIONS, WARRANTIES AND AGREEMENTS MADE HEREIN MAY BE RELIED UPON BY ANY THIRD-PARTY TRUSTEE APPOINTED BY THE TREASURER.



**Appendix A**

(If no initial allocation is made, all funds will be deposited by default into the STIF)

**Initial Investment Allocation Election:** The undersigned participant must designate investment allocation below by percentage amount in the section below. This will be the allocation in which monies currently in the fund will be allocated and such allocation will occur on or about thirty days after the transition to the EIF and the BIF.

Equity Index Fund (EIF)	By Percentage
As permitted by NCGS 147-69.2 (b) (8)	70%
Bond Index Fund (BIF)	
As permitted by NCGS 147-69.2 (b) (1-6)	8%
Short Term Investment Fund (STIF)	
As permitted by NCGS 147-69.2 (b) (1)	22%
<b>Total</b>	<b>100%</b>

Not to Exceed 100%

**Effective Date**

Versions	Revisions
June 21, 2012	Original Effective Date
May 21, 2021	Deposit agreement and Attachment A updated



**Stewardship Program Guidelines and Practices:**

Retired Principal Guidelines and Practices (STW-006)

**Background:** Beginning in 2004, State-held conservation easements received funds to be held in the Stewardship Endowment. Some of these properties will be transferred to State ownership; when the land is conveyed, the partner’s monitoring obligation is extinguished and they are no longer reimbursed for monitoring services for the property. This principal cannot be withdrawn from the Endowment.

The purpose of these guidelines is to formalize approved options to reallocated unassigned principal from these projects.

**Guidelines and Practices:**

When a property under State-held conservation easement is transferred to State ownership and the Fund notified of this transfer, the obligation for the easement steward to monitor the property is terminated. Funds held in the stewardship endowment must remain in the endowment and available for stewardship program expenses. Retired principal may remain unallocated or be reassigned, with Board approval, as follows:

1. Assigning the principal to a State-held conservation easement that does not have endowment funds for monitoring. Staff will identify a qualified easement steward, negotiate annual monitoring costs, enter into contract with the organization, and record the obligation to monitor in the county register of deeds if appropriate.
  
2. Assigning the principal to an underfunded State-held conservation easement, when costs significantly outweigh the available funds allotted to the project. Staff will negotiate monitoring costs with the stewardship organization and increase the reimbursable property cap.

**Effective Date**

Versions	Revisions
May 21, 2019	Original Effective Date



## Stewardship Program Guidelines and Practices:

### Conservation Agreement Enforcement (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 responsibility to address the violations in an effective, timely, prudent, and consistent manner.

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

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#### Guidelines and Practices:

##### 1. Roles and Responsibilities

Contracted conservation agreement monitors, NCLWF Staff, the NCLWF Board of Trustees, Department of Natural and Cultural Resources 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 these enforcement guidelines, 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 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:

- a. Procedural violations – violations in which the landowner fails to comply with a required procedure 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 Guidelines and Practices, 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**

Violations 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, 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 as soon as practicable.
- c. Staff will report to the Board annually on the numbers, classification, and status of all violations.

**Effective Date**

Versions	Revisions
May 24, 2021	Original Effective Date



**Stewardship Program Guidelines and Practices:**

Third-Party Right of Enforcement (STW-008)

**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 responsibility to address the violations in an effective, timely, prudent, and consistent manner.

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

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**Guidelines and Practices:**

1. It is the requirement and expectation of the NCLWF that the holder of a conservation agreement recorded as part of a NCLWF grant award enforce the terms of the conservation agreement in perpetuity through any and all means and authorities under law or equity.
2. The NCLWF reserves the right, but is not obligated, to exercise its third-party right of enforcement if it determines that the conservation agreement holder has failed to enforce the terms of the conservation agreement. Non-enforcement with respect to a violation shall not constitute a waiver of the State’s third-party right to enforce against the violation or any other violation in the future.
3. If NCLWF staff, in consultation with Department of Natural and Cultural Resources legal counsel, determines that the State should exercise its third-party right of enforcement, staff will follow the procedures established in the NCLWF’s Conservation Agreement Enforcement (STW-007) to assess the severity of violation and the possible actions for addressing the violation.

**Effective Date**

Versions	Revisions
February 28, 2023	Original Effective Date