

AGENDA
North Carolina Land and Water Fund
Board of Trustees Meeting
December 1, 2020 – 1:00 p.m.

Due to the COVID19 pandemic, this meeting will only be available to the public by teleconference. Please contact Sydney McDaniel at sydney.mcdaniel@ncdcr.gov to request a meeting invitation/call-in for the meeting.

Board of Trustees:

Greer Cawood (Chair), Ann Browning, Amy Grissom, Judith Kennedy, Renee Kumor,
Jason Walser, Darrel Williams, John Wilson, David Womack

COMMENCEMENT

- 1) Call to Order (Chair)**
 - a) Welcome
 - b) Roll Call
 - c) Compliance with General Statute § 138A-15

General Statute § 138A-15 mandates that the Chair inquire as to whether any Trustee knows of any conflict of interest or the appearance of a conflict of interest with respect to matters on the agenda. If any Trustee knows of a conflict of interest or the appearance of a conflict of interest, please state so at this time.
 - d) Please Put Cell Phones on Vibrate or Turn Off
 - e) Revisions, Additions, and Adoption of the Agenda
- 2) Consent Agenda (Chair)**
 - a) Approval of Minutes from the September 2020 Board Meeting
- 3) Chief Deputy Secretary's Update – Reid Wilson**
- 4) Legal Update – Hank Fordham**
- 5) Executive Director's Update – Walter Clark**

PUBLIC COMMENTS

The public is invited to make comments to the Board – Chair (*Three Minutes per Person*)

BUSINESS

- 1) Consideration of Acquisition Committee recommendations (Chair)**
 - a) **2008-023 Town of Jonesville, Yadkin Greenway** (Marissa Hartzler) - Proposal to amend a declaration of restrictive covenants for a land swap to relocate the greenway.
 - b) **DSWCD Bahama Park** (Marissa Hartzler) - Proposal to amend a donated conservation easement to relocate a park building envelope, terminate third party rights of park management, and add trail stream crossings.
 - c) **2000A-008 White Oak Game Land** (Marissa Hartzler) - Request from current owner (NC Wildlife Resources Commission) to amend the conservation easement to include native community restoration for longleaf pine management and other standard reserved rights.

- d) **Income generation and commercial use in easements** (Will Summer) - Proposed revision to the policy “Income Generation and Mitigation Activities within the NCLWF Conservation Agreement Areas”.
 - e) **2019-063 Town of Cedar Point Park** (Nancy Guthrie) - Request by the Town of Cedar Point to add the reserved right to hold two annual public events/festivals under Declaration of Covenants and Restrictions.
 - f) **Historic and Cultural Application Success Rate** (Nancy Guthrie) – Staff was asked to review applications for historic and cultural sites submitted in grant cycles 2014-2020. A summary and committee recommended actions will be presented.
- 2) **Consideration of Restoration, Innovative Stormwater, and Planning Committee recommendations** (Chair)
- a) **New River Conservancy Contract Amendment Request – 2018-410** (Steve Bevington, Damon Hearne) - Request to reduce and modify the scope of work for the project as land ownership has changed.
 - b) **Review of condemnation policies** (Will Summer) – Staff will review condemnation policies as they relate to the restoration program and associated property acquisition.
- 3) **Stewardship Program Updates**
- a) **Easement endowment deposit update** (Marissa Hartzler) – Staff will update the Board on the changes in the endowment deposit as a result of market fluctuations between the approval and the end of the fiscal year.
 - b) **Proposed stewardship endowment expense** (Marissa Hartzler) – Staff is requesting approval of an additional expenditure of funds from the Stewardship Endowment, per the policy.

ADJOURNMENT

Action Item**Staff member: Marissa Hartzler**

Agenda Item: 1a) 2008-023 Town of Jonesville, Yadkin Greenway Declaration Amendment

In 2008, the Board awarded funds to the Town of Jonesville to acquire and protect land along the Yadkin River in Yadkin County, to be owned and managed by the Town as the Jonesville Greenway. This project, along with two others that followed, resulted in several miles of properties purchased for inclusion in the greenway.

At the time of this project, unsuccessful negotiations with one landowner with river frontage resulted in an approximate 0.25-mile stretch of the greenway positioned further upland. A new landowner now owns the property on both sides of the greenway and has worked with the Town to temporarily relocate the greenway closer to the Yadkin River for an additional ~715 feet. This reroute is open to the public and the old section of greenway has been retired.

The Town and the landowner view this realignment as beneficial for all parties and would now like to formalize a land swap. The proposal calls for removing the majority of the 30-foot wide, 0.99-acre property protected with NCLWF funds from the Declaration of Restrictive Covenants, deeding it unencumbered to the adjoining landowner in exchange for comparable acreage along the river that will be owned by the Town and added to the property protected by the Declaration.

The Declaration recorded for this property allows for amendments with prior written approval of the Fund. The Town is awaiting this approval prior to moving forward with the expense of a survey.

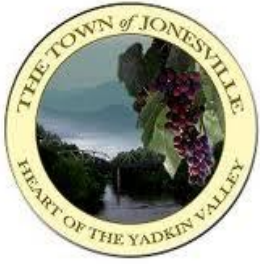
Committee Recommendation

Recommend Board approval to allow for the amendment of the Declaration of Restrictive Covenants to enable the land swap to realign the Town of Jonesville Greenway.

Board Action Needed

Approve, deny, or amend Committee Recommendation

Attachments: request from the Town of Jonesville, map of relocated greenway



TOWN OF JONESVILLE

1503 NC Hwy. 67
Jonesville NC 28642
(336) 835-3426
(336) 835-3231 - Fax

September 4, 2020

Marissa Hartzler
Stewardship Program Manager, CWMTF

Dear Marissa,

The purpose of this letter is to request an amendment for property acquired by the Clean Water Management Trust Fund for the Town of Jonesville. Several years ago, we received a grant from CWMTF to acquire property for the Trail and worked a deal to use the exterior border of a tract to have a continuous path. The property has changed hands and the new owner has expressed an interest to trade our trail property, parcel 154797, for a better route closer to the River on his property. This would help the property owner and greatly enhance our trail.

The request is a transfer of real property, identified as parcel 154797, in return for property better suited for our trail system, adjacent to the river. It would serve the public interest by providing a continuous path next to the river that flows with the remaining trail system along our greenway. This action will allow us to better preserve, enhance, restore, and maintain the natural features of the riparian area. It supports our ongoing efforts to maintain water quality and control runoff of sediment for environmental, educational, and recreational uses.

With great respect to the CWMTF, we are asking for this amendment and believe the request to be in accord with the intent of the restrictive covenants as outlined in CWMTF 2008-023.

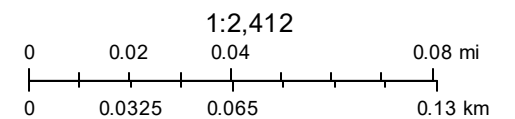
Feel free to contact me if you have any questions.
Sincerely,

Michael W. Pardue, Town Manager



August 17, 2020

- Addresses
- ▭ Parcels
- Lake Hampton



Mapping information is a representation of various data sources and is not a substitute for information that would result from an accurate land survey. In no event shall Yadkin County Planning Department or Yadkin County, NC be liable for any damages, direct or consequential, from the use of the information contained on this map.

Action Item**Staff member: Marissa Hartzler**

Agenda Item: 1b) Durham Soil and Water Conservation District, Bahama Park

In 2004, the State acting by and through the NC Clean Water Management Trust Fund accepted a conservation easement on 48 acres in Durham County at the request of Durham Soil and Water Conservation District and the original grantor. This donation of easement was not linked to a grant award, but the purposes of protecting stream buffer and providing public access are in line with NCLWF's primary purposes. The easement allowed for agricultural and timber management outside of stream buffers, a 20-acre park envelope that permitted active recreational facilities, and third-party rights of park management to two community organizations, the Northern Junior Athletic Association, Inc., and the Bahama Ruritan Club.

Durham SWCD, current owner of the property, is planning a passive nature park on the property, extending to adjacent land owned by the County for the Bahama Fire Department. This design includes park facilities including access road, parking, restrooms, natural surface trails, and outdoor agricultural education areas.

Overall, the concept is consistent with the original conservation easement and amendments thereto; however, to accomplish the specifics of this plan, Durham SWCD requests moving the park envelope to encompass the legal access, existing road, and previously disturbed agricultural lands. They also request the right to maintain existing roads and trails on the property and the right to build trail stream crossings, both of which are standard reserved rights in NCLWF's current template. The easement amendment will also terminate all third-party rights to cede all management and maintenance responsibilities to Durham SWCD.

Staff feels this plan will provide positive benefit to the conservation values, focusing on passive nature recreation and education, constructing facilities outside of the forested stream buffer and in previously disturbed areas only, and decreasing the park envelope to +/-17.25 acres (a decrease of 13.8%), while also providing public benefit through the creation of a park and outdoor education space.

Committee Recommendation

Recommend Board approval to allow for the amendment of the donated conservation easement to realign the park facilities envelope, allow for pedestrian stream crossings and existing road and trail maintenance, and terminate the third-party rights of park management.

Board Action Needed

Approve, deny, or amend Committee Recommendation

Attachments: letter from DSWCD, background of project, site map



201 E Main St, Fl 5, Durham, NC 27701

October 28, 2020

NC Land and Water Board of Trustees
1651 Mail Service Center
Raleigh, NC 27699-1651

Dear NC Land and Water Fund Board of Trustees,

The Durham Soil and Water Conservation District (Durham SWD) supports the easement amendment language for consideration by NC Land and Water Fund (formerly Clean Water Management Trust Fund) that is being submitted by Jeff Masten with Land Matters on behalf of the district. This amendment #3 submitted is for alteration of the conservation easement (amendment 2) encumbering the Durham SWCD property and recorded in the Durham County Register of Deeds in Book 6073, Page 569-573 ("the Easement").

Due to omissions in the original language Durham SWCD request the following changes to the easement language that enable the construction of the Bahama Community Park, a park envisioned by Dr Marie Roberts who donated the easement to CWMTF and the land to DSWCD in 2004.

This easement:

1. Changes the responsible party for the future park entity to the Durham Soil and Water Conservation District.
2. Changes the Potential Community Park Area location to a more suitable park location and supports the CWMTF mission by reducing the intersection of the park activity area with existing stream corridors. Additionally, the Park area is reduced from a possible 20 acres to 17 acres.
3. Enables the construction of pedestrian bridges to work in connection with the permitted trail network.
4. Enables the construction of a natural surface emergency access road to support the safety of the park.

We thank you in advance for your attention to this matter!

Sincerely,

A handwritten signature in cursive script that reads "Talmage Layton".
Talmage Layton
Chairman-Durham SWCD

The soil is the source of life, creativity, culture, and real independence

Background of the Bahama Community Park

The Bahama Community Park is collaboration between the Durham Soil and Water Conservation District (DSWCD) and the Bahama Fire Department (BFD). The project was initiated by Dr. Marie Roberts as a bequest in her will and the donation of land to both of the participating entities. The funds for the park construction were left in a fund at the Triangle Community Foundation.

The Bahama Community Park is being developed through the following process:

Advisory Committee: A committee comprised of 2 Durham Soil of Water Conservation Board members, Director of DSWCD and DSWCD staff member; Two Bahama Fire Department Board Members, Fire Chief of BFD and Executor of Dr. Marie Roberts Estate and assorted community members familiar with Dr. Roberts intent for a community park. The committee makes all decisions about the park planning.

Future Management of the Park: The Bahama Community Park will be managed by a Park Management Committee comprised of an equal number of members from DSWCD and BFD with input from a park advisory committee comprised of community members.

Facilitation: Landmatters, a conservation consulting firm hired by Triangle Community Foundation, is facilitating the planning and construction process for the park. Landmatters has extensive experience with community engagement for public projects. Landmatters personnel are experienced NC Land Trust staff members experienced in environmental planning, conservation easements, land acquisitions, development of nature preserves and community outreach.

Transparency: The DSWCD and BFD Boards of Directors have been informed of all actions and activities related to the parks. The DSWCD is consistently updated voted to accept the proposed conservation easement amendment. All past, current and future activities related to development of the potential community park will first need board approval from the Boards of Directors from both organizations. Current board members from both organizations are actively engaged in the planning and implementation of the park.

Community Outreach - a deliberate community outreach agenda is in place to ensure that the park is keeping with community interests and the wishes of the donor Dr. Marie Roberts. Minutes from meetings, correspondence and additional information was provided for review. The process to date includes:

1. Letters to all adjacent neighbors describing the park and Dr. Roberts' vision.
2. Community meeting held with the Advisory Committee in attendance to layout the vision, to request additional park ideas and amenities suggestions, to address

neighboring concerns about safety, public access, park rules, hours of operation and the all other concerns.

3. Email list-serv to respond to all concerns was provided to all participants and public at large
4. Facebook posting on DSWCD and BFD pages including the Draft Park Site Plan and a request for comment.
5. Website developed on-line for the community and all others providing the detail of the Draft Park Site Plan, seeking feedback. <https://www.thelandmatters.com/a-park-for-bahama.html>
6. Bahama Day- In October 2019, the Park Advisory Committee established a table with resources and maps to inform the community and to take questions and solicit ideas for park and naming the park. Bahama Day is an annual festival for the community. 100+ community members visited the table.
7. Accessibility of all Advisory Committee members- Advisory Committee members have an active role as committee representatives in the community to solicit responses from friends, neighbors and community members about the park.

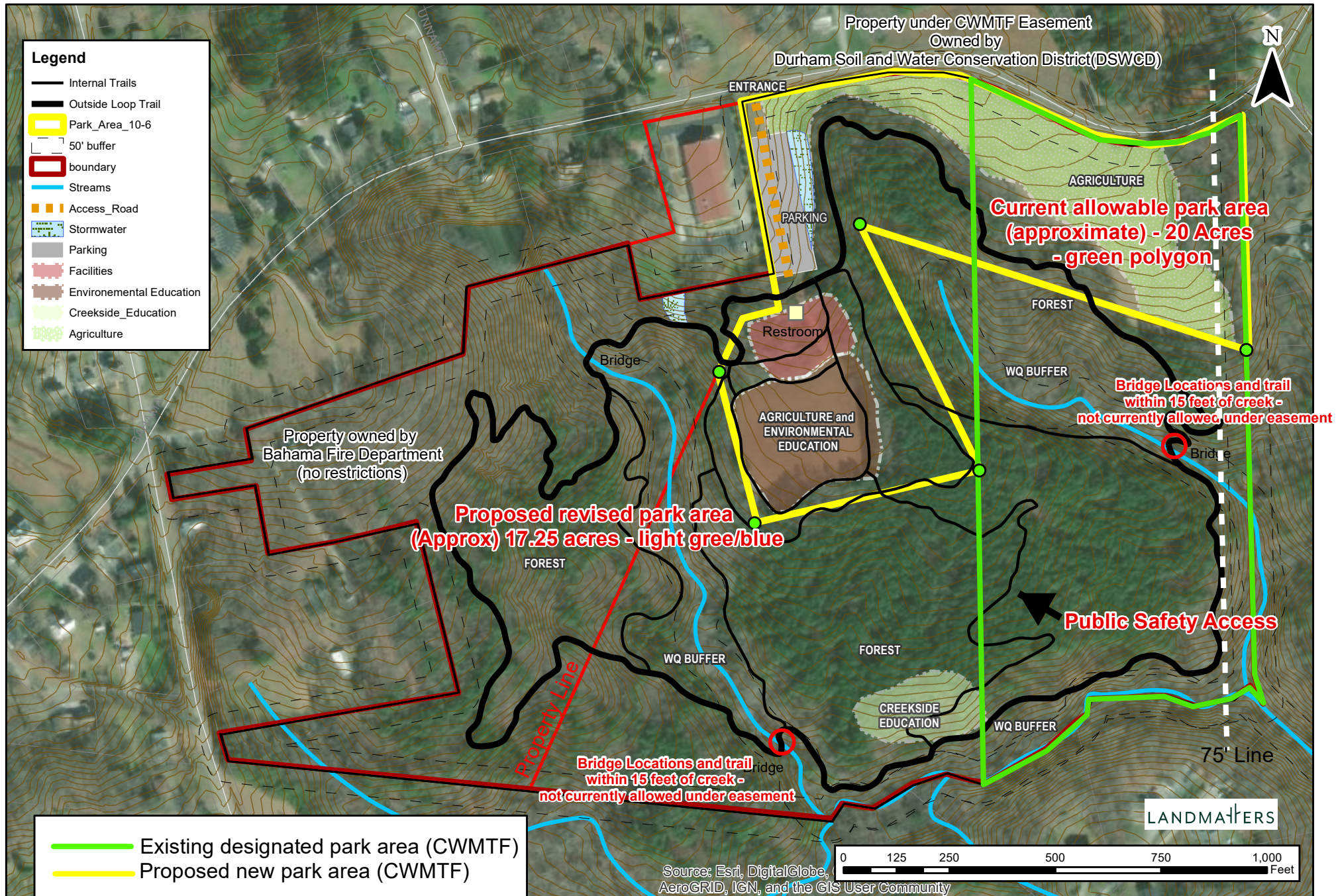
Water Quality Protection: The DSWCD is a prominent water quality expert working with farmers and local Durham residents to plan for the water quality protection of their properties. DSWCD owns land and holds conservation easements, including water quality buffers. All park activities are targeted in the upland portions of the property, 200+ feet from any streams, except for sections of the trail system and bridges anticipated at the park.

Long-term Operation and Oversight: The Bahama Fire Department will become the operating entity for the Park's daily maintenance. The maintenance activities, future programming and oversight will be administered by the Park Management Committee described above. The public will also have a role in volunteer support as well as members of the Park Advisory Committee which will give feedback to the Management Committee. The financial support for the park maintenance will be held in a Fund at the Triangle Community Foundation and distributed annually to the Management Committee. Due to the Fund, limited to no fundraising will be necessary for the park maintenance activities.

Bahama Community Park Concept Map

CWMTF - Park Area Map

9/29/2020



**Education Areas are informal meeting locations with no fixed infrastructure, Future ~20'x30 open shelter not represented on map- anticipated near restroom on eased property

Action Item**Staff member: Marissa Hartzler**

Agenda Item: 1c) 2000A-008 White Oak Easement Amendment

In 2000, the Board awarded over \$2.1 million to NC Coastal Federation toward the acquisition of 775 acres of floodplain and wetlands along the White Oak River in Onslow County. The scope of work allowed NC Coastal Federation to purchase and protect the entire property with the option of selling the agricultural uplands provided proceeds would be put back into riparian protection. The conservation easement recorded on the entire property indicates that it may be amended or terminated pending future ownership and management. As such, the easement recorded was more restrictive in the riparian areas, while allowing for continued agriculture in the uplands, but overall, the document lacks many standard rights.

In 2009, NC Coastal Federation conveyed the property to the State for management by the NC Wildlife Resources Commission as part of the White Oak Game Lands. The conservation easement was not amended at that time and the land was not dedicated through the State Nature Preserves Act, but NC Coastal Federation continues to monitor on behalf of the State.

WRC staff have inquired to NCLWF staff about the possibility of performing native community restoration to convert some of the cropland to longleaf pine, which is not a right reserved in this easement. NCLWF and WRC staff have discussed the management of the property, and the possibility of amending the conservation easement to include the reserved rights now standard on all projects with a conservation easement. In addition to native community restoration, WRC staff requests the ability to maintain parking, hunting blinds, universal access, and some agriculture to facilitate WRC's food plot and dove fields projects, which are all routinely requested reserved rights for projects that go directly into state ownership.

Natural Heritage Program staff inventoried the site and agree the conservation values are found in the floodplain, but that restoration of the uplands could provide additional conservation benefits. NC Coastal Federation, as the original grantor of the conservation easement, supports the concept of such restoration. Should NCLWF Board approve an amendment, the language of the reserved rights will be drafted by NCLWF and WRC staff, and staff will seek additional feedback from WRC and/or NC Coastal Federation prior to seeking approval from the Council of State.

Committee Recommendation

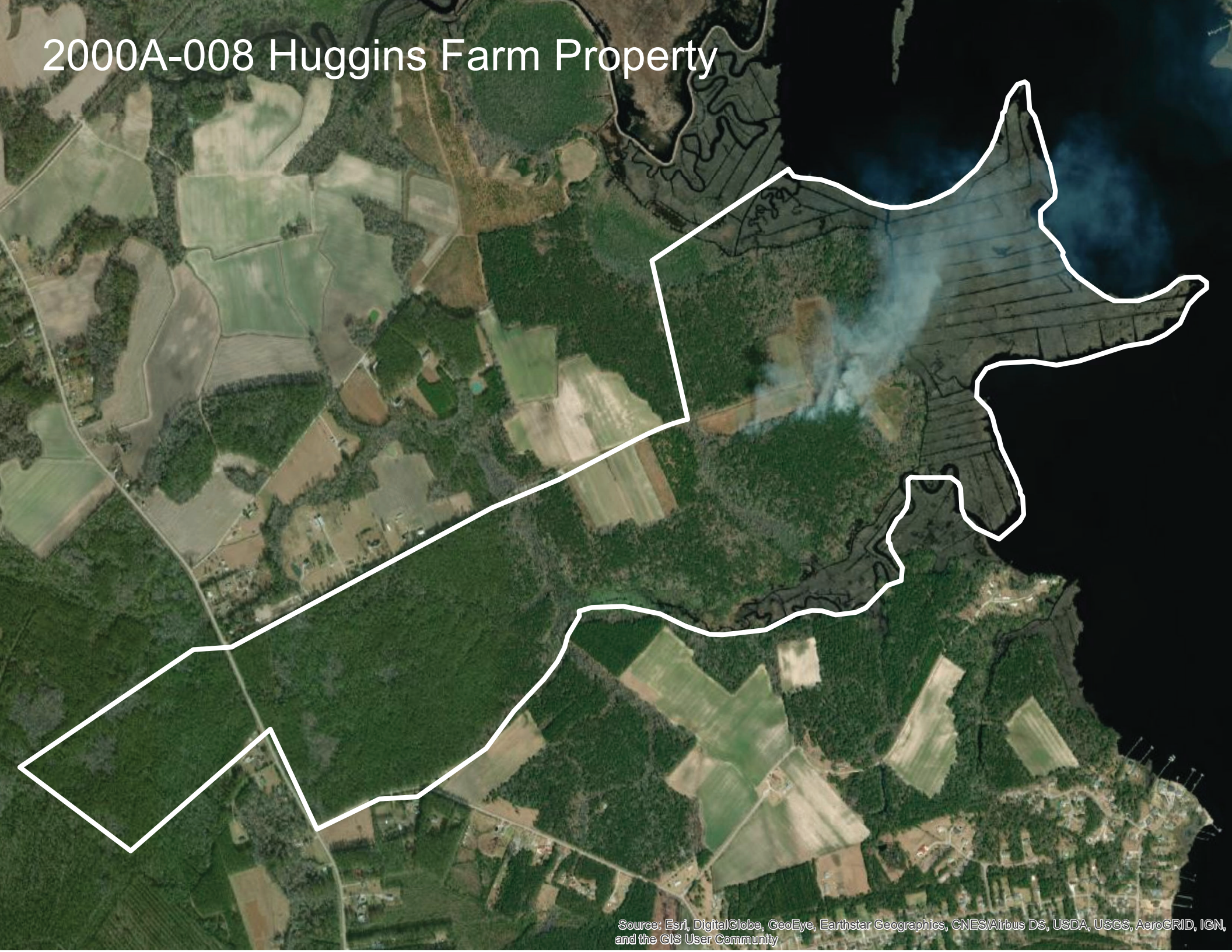
Recommend Board approval to allow for the amendment of the conservation easement to include NCLWF's standard conservation easement reserved rights, and standard allowances for state-owned WRC projects such as parking, hunting blinds, universal access, and food plots/dove fields all restricted to the former agricultural uplands.

Board Action Needed

Approve, deny, or amend Committee Recommendation

Attachment: map of easement area

2000A-008 Huggins Farm Property



Action Item**Staff member(s): Will Summer**

Agenda Item 1d) Income generation and commercial use in easements

Commercial use and income generating activities are addressed in the policy “Income Generation and Mitigation Activities within the NCLWF Conservation Agreement Areas” and in the commercial use language within the standard easement. In addressing requests from grantees, both during the easement negotiation phase and the easement stewardship phase, staff has observed that these are not always consistent with one another and may unintentionally restrict activities that may otherwise be considered consistent with the conservation values.

Background

A variation of the “No Commercial Activity” language has been common in conservation easements, including ours, for decades. NCLWF’s current easement language simply reads: “Industrial and commercial activities are prohibited in the Easement Area.” Interpretation of what activities are considered “commercial” varies in the conservation community. The strictest interpretation would include the exchange of any good or services for money. Because of this interpretation, some in the conservation community are recommending against strict blanket prohibitions on commercial activity in their own easements.

In addition to the easement language, commercial activity is also indirectly addressed in a Board policy that was established in 2015 dealing with income generation and mitigation activities within easements. Part of the interest in this policy was to ensure that the State not improperly subsidize private ventures or “double-pay” for particular benefits received from conservation easements. The policy does allow for income from uses that are “incidental to and not inconsistent with the purpose or purposes for which the land is held and used.”

At its April 29th, 2020 meeting, the Acquisition Committee reviewed an amended policy draft for “Income Generation and Mitigation Activities within the NCLWF Conservation Agreement Areas.” and requested staff to reach out to our partners for comments. Staff presented to the policy to the NC Land Trust Federation (LTF) members and asked them to share with their staff and provide any comments or concerns. There were no formal comments received, though several members of the LTF were supportive of NCLWF tackling this issue.

The Committee recommends the revised policy for approval by the Board.

Board action needed: Approve, modify, or reject the proposed policy amendment for adoption.

Attached: Revised Draft Income Generation and Mitigation Activities within the NCLWF Conservation Agreement Areas.

Acquisition Program (ACQ-004)

Income Generation and Mitigation Activities within the NCLWF Conservation Agreement Areas

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 ~~produce no income or produce income that is incidental to and not inconsistent with the purpose or 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.

NCGS §113A-254 (c) prohibits the NCLWF from awarding grants to satisfy compensatory mitigation requirements under 33 USC §1344 or G.S. 143-214.11.

By this policy 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. This policy applies to conservation agreements on property owned by private individuals, non-profit groups, and government agencies.

Policy:

A. Income Generation within conservation agreement areas

Conservation agreements shall only allow income from activities that are ~~incidental to and not inconsistent with the purpose or conservation values and/or~~ purposes for which the land is ~~held and used~~ 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 ~~directly supports the~~ is not inconsistent with the NCLWF's purpose and does not result in ~~financial benefit to any party~~ duplicative payment for a benefit or action already acquired by the NCLWF.

Action Item**Staff member: Nancy Guthrie**

Agenda Item: 1e) Town of Cedar Point Park

In 2019 NCLWF awarded a grant of up to \$1,011,756 to reimburse the Town of Cedar Point for purchase of 49 acres that will become a passive-use park, protected by restrictive covenants.

The application scored 83 points primarily for riparian buffer (approximately 1 mile of stream buffer along White Oak River and Boathouse Creek), and natural heritage elements (White Oak River Marshes natural area). It is also in the viewshed of the Octagon House and is a medium priority military flight zone.

The Town requested the reserved rights to repair or replace an existing dock, construct a new fishing pier, four overlooks, a canoe/kayak launch, a picnic shelter/outdoor classroom, and two small unpaved parking areas. The Town also requested an existing field remain open for public use.

During the drafting of the Declaration of Covenants and Restrictions, it was discovered the Town desired to hold two annual festivals on the property. The festivals would involve food trucks and vendors on the property. This activity causes concern with the prohibition of commercial uses (vendor fees) on the property and use of motor vehicles for purposes other than maintenance, monitoring, emergencies, and access to the two small parking areas which were approved.

This activity would take place only in an area that is currently cleared and is permitted to stay open for public use. It would not impact protection of conservation values.

Committee recommendation: Approve use of the open area for two annual festivals with the condition that property be returned to its original condition after the events.

This will allow NCLWF staff and the Town of Cedar Point to include this reserved right in the Declaration of Covenants and Restrictions before it is recorded.

Committee action needed:

Approve, deny, or amend committee recommendation.

Attachments: Conceptual plan of Cedar Point Park to show the location of the open area where festivals would occur.



This map is provided to show the location of the open existing field “open space/events lawn” where annual festivals would occur. Other elements of the Cedar Point Park plan are not finalized.

Action Item

Staff member: Nancy Guthrie

Agenda Item: 1f) Historic and Cultural Application Success Rate

NCLWF staff was asked to review applications with a historic or cultural resource with respect to success rate.

Staff reviewed the number of applications received for grant cycles 2014-2020 to determine the overall number of applications in each category (riparian buffers, ecological diversity/natural heritage, greenways, and historic and cultural) and the frequency with which each category was funded.

Summary of data review and observations:

- The number of applications for historic and cultural sites is significantly lower than applications that focus on riparian buffers and natural heritage areas, and slightly higher than applications for the purpose of developing a greenway.
- Historic and cultural sites have been funded at a comparable rate as riparian buffer, natural heritage, and greenway applications.
- Historic and cultural applications have comparable scores in the Resource Benefits section of the Application Rating System as other categories.
- Projects with multiple resource benefits are more successful for funding.
- Historic and cultural sites are more subjective and need more interpretation than other categories.

Committee recommendation:

Review all applications that are highly scoring in any resource category through a presentation at the annual committee funding meeting.

Board action needed:

Recommendation to the Board to approve, deny, or modify committee recommendation.

Action Item**Staff members: Steve Bevington, Damon Hearne**

Agenda Item: 2a) New River Conservancy Contract Amendment Request – 2018-410

In 2018 NCLWF awarded a grant of up to \$440,000 to the New River Conservancy (NRC) to restore 3,000 linear feet of the South Fork New River adjacent to the New River State Park. After this award was made and before construction began a change in ownership on the privately held left bank of the project area meant that a letter of commitment to participate in the project was no longer valid. The present owners have not yet agreed to sign a conservation easement making completion of the contracted scope impossible. NRC proposed to shorten the project area and to work on only Park property as the left bank of the project was somewhat protected as being behind an island.

Staff met with NRC and New River Park staff on-site February 17, 2020 to review project progress and challenges. NCLWF staff encouraged NRC staff to secure protection to all project areas to a level at least as strong as NRC's RiverBuilder program (also funded by NCLWF). As NRC has met this condition in a modified scope change request and presented a sound restoration concept plan, staff supports NRC's proposed scope, plan and budget.

The Restoration Committee met on November 10, 2020 and considered this request. The Committee recognized both positive and negative aspects to the request. Finding that, as some change in scope is necessary and the request outlines a viable and useful project, the Committee made the following recommendation:

Committee Recommendation:

Approve the request to reduce project scope to a 1,800 linear project on and adjacent the New River State Park with a budget of up to \$248,000 and the condition that riparian buffers on river left are protected with riparian plantings and a 15-year (or longer) landowner signed agreement to protect planted vegetation.

Board Action Needed:

Approve, deny, or amend Committee Recommendation.

Attachment: Summary of proposed scope changes from New River Conservancy

2018-410 Bard Phase II - Scope Revision Proposed by NRC

Original Request: **\$440,000** with a match of \$299,460 (**40%**) for a project budget of \$739,460.
3,000 linear feet to be restored at **\$247 per linear foot**.

Revised Request: **\$248,750** with a match of \$178,150 (**42%**) for a project budget of \$426,900.
1,800 linear feet to be restored at **\$237 per linear foot**.

Project Site

The revised project area is a reach of the South Fork New River downstream of a previously restored section (NCLWF 2015-411). The reach is adjacent to the New River State Park on the right bank and is approximately 800 feet downstream of a completed NCLWF project 2016-410.

Original Scope of Work

- Prepare a detailed engineering design for the restoration of 3,000 linear feet of South Fork New River to a stable condition attending to river dimension and streambed diversity
- Prepare permit application documents and obtain all applicable permits
- Negotiate, prepare, and record conservation easements along the project length
- Construct the stream restoration per the engineering design
- Oversee construction activities, manage the project in total and report to NCLWF

Proposed Revision to the Scope of Work

- The engineering design is complete (funded by the DOJ EEG Hog Farm Settlement) and details the restoration activities for 1,800 linear feet of river
- Prepare permit application documents and obtain all applicable permits
- Negotiate, prepare, and record permanent protections of the project site on river right with the New River State Park
- Have private landowner on river left sign 15-year Landowner Agreement for river buffer planting
- Construct the stream restoration per the engineering design
- Oversee construction activities, manage the project in total and report to NCLWF

Reason for Revision

The private landowner on river left has decided to no longer participate in the construction restoration of the South Fork New River. However, we have discussed the option of vegetating this reach of riverbank with the landowner and she is very interested because it does not require a conservation easement. We have informed her of the 15-year Landowner Agreement and I have offered to meet her on site to further discuss what to expect.

We have worked with the contractor, Brushy Fork Environmental Consulting (BFEC), to develop a revised scope, design, and budget to address the erosion and lack of habitat on this site. If left alone, BFEC advises that the island will continue to aggrade (grow in size) placing more and more shear stress on the already erosive outer banks of the SFNR. This will cause the island to grow and more erosion to

occur. This is why it is vital to slope and restore the right bank and vegetate the left bank to prevent any further erosion and scouring.

We propose changing the scope of this project from 3,000 linear feet to 1,800 linear feet. We propose construction restoration including sloping, structures, and buffer planting along the right channel (between the New River State Park and the island) and buffer planting along the left channel (between the private Bard Farm and the island).

Information Item**Staff members: Will Summer**

Information Item: 2b) Review of Condemnation Policy**Background**

The NCLWF Board of Trustees has developed policy to guide how and when project implementation should interact with an agent, such as a municipality, that wished to employ power of condemnation to complete the project. This policy was first established in 2003 and was revised and updated by the Board on June 3, 2015. There is an additional policy that addresses avoidance of condemnation and how restoration program funds are restricted with respect to land acquisition. Both policies are attached below.

Recently several potential uses of condemnation have been considered by parties involved in NCLWF restoration projects, though ultimately the right was not exercised. Staff reviewed the policies with the Restoration Committee on November 10, 2020. The Committee suggested that as this policy is relevant to many NCLWF functions the Board, that this information item be placed on the December meeting agenda.

Board Action Needed:

None

Attachments: Current NCLWF policies related to condemnation (MPP-003 & MPP-004)

Multiple Program Policies:**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.

Policy

1. Funds from the NCLWF are typically used for purchase of property fee simple or conservation easements on property as describe 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 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 greater than the appraised value up to \$20,000. Any amount over this must be considered by the Board of Trustees. This policy will apply to greenway projects completed by non-profit 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

Versions	Revisions
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 Policies:**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”. (N.C. Gen. Stat. § 113A-253(c)). The statute requires that NCLWF consider eleven specific factors when awarding grants. N.C. Gen. Stat. § 113A-256 (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.” N.C. Gen. Stat. § 113A-256 (c).

NCLWF does not have the legal authority to acquire lands by condemnation. Specifically, N.C. Gen. Stat. § 113A-256(d) provides that the Trustees may acquire land by purchase, negation, 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 N.C. Gen. Stat. § 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.

Policy:

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 N.C. Gen. Stat. § 113A-256 (b). 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

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The NCLWF history with eminent domain 2000-2008

1. The Board considered eminent domain issues in 2000 and 2001 as part of their 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 their appraisal policy: "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 their contract to pay for legal expenses related to the eminent domain actions they were pursuing on six tracts in their Tar River greenway project. The Board specifically noted that their 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 them for a \$158,000 expense they 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, however the 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).

Information Item**Staff member: Marissa Hartzler**

Agenda Item 3a) Stewardship Endowment Deposit Update

Each year, per Board policy and the deposit agreement with the Treasurer's Office, the Board is compelled to make decisions about the endowment, including approving the deposit of funds from recently closed Acquisition projects.

At the May 2020 Board meeting, the Board approved an endowment transfer that was structured to balance the endowment funds at the Treasurer's Office agreed upon target investment percentages. Calculations were based off the most recent endowment financial statements through March 2020. At the time, BIF and STIF were higher than their targets (by 1% and 2%, respectively) and EIF was below its target by 3%. The Board approved the deposit as presented at the May meeting, but the transfer could be made until the end of the fiscal year in July.

In the interim, the EIF rebounded to 1% over its target investment percentage. Moving forward with the transaction as structured in the May presentation to the Board would have resulted in an imbalance that may have resulted in losses should the market take another downturn.

Therefore, the transaction was restructured as shown in the attached Updated Endowment Transfer. It ensured the Endowment met its target investment percentages while not changing the Board-approved deposit of \$191,125 to principal and withdrawal of \$132,177 in investment income.

Board Action Needed

As an informational item, no action is needed

Attachments: Updated Endowment Transfer spreadsheet

NCLWF Stewardship Endowment - Proposed Withdrawals & Deposits

<u>Bond Investment Fund (BIF)</u>	<u>Principal</u>	<u>Investment Income</u>	<u>Total Value</u>	<u>Percent of Fund Balance</u>
BIF as of 6/30/2020	\$272,813.66	\$183,063.76	\$455,877.42	
Deposit	\$100,000.00			
Withdrawal		(\$100,000.00)		
Subtotal BIF - after transfer	\$372,813.66	\$83,063.76	\$455,877.42	8.21%

<u>Short-Term Investment Fund (STIF)</u>	<u>Principal</u>	<u>Investment Income</u>	<u>Total Value</u>	<u>Percent of Fund Balance</u>
STIF as of 6/30/2020	\$1,080,791.81	\$45,086.83	\$1,125,878.64	
Deposit	\$91,125.00			
Withdrawal		(\$32,177.00)		
Subtotal STIF - after transfer	\$1,171,916.81	\$12,909.83	\$1,184,826.64	21.35%

<u>Equity Investment Fund (EIF)</u>	<u>Principal</u>	<u>Investment Income</u>	<u>Total Value</u>	<u>Percent of Fund Balance</u>
EIF as of 6/30/2020	\$2,339,115.58	\$1,570,318.02	\$3,909,433.60	
Deposit				
Withdrawal				
Subtotal EIF - after transfer	\$2,339,115.58	\$1,570,318.02	\$3,909,433.60	70.44%

Totals	\$3,883,846.05	\$1,666,291.61	\$5,550,137.66	100.0%
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Proposed principal deposit:

\$191,125.00

Proposed withdrawal:

(\$132,177.00)

Investment income (current value - principal): **\$1,666,291.61**

NCLWF Fund Balance and Allocation Ranges, per the Deposit Agreement with the Treasurer's Office

	<u>Current fund balance</u>	<u>Asset allocation</u>	<u>Difference</u>
Bond Investment Fund	8.2%	8.0%	-0.2%
Short Term Investment Fund	21.3%	22.0%	0.7%
Equity Investment Fund	70.4%	70.0%	-0.4%

Action Item**Staff member: Marissa Hartzler**

Agenda Item 3b) Proposed Stewardship Endowment Expense

Since June 2019, NCLWF has employed a temporary GIS staffer dedicated to the update of our spatial data. Over the past 18 months, the project has resulted in updated mapping for 34% of the State's counties. The intent was to continue funding the position until work is complete, approximately three years. Due to COVID-related budgetary restrictions, however, all departmental temporary staff were required to be furloughed unless alternate, dedicated fund was available to cover costs.

Given the importance of this project to the Stewardship Program, staff sought and received Executive Director approval to temporarily shift expenses to the Stewardship Endowment beginning in October 2020. Stewardship Funds Use Policy (STW-002) allows that miscellaneous management and administrative activities that may fall out of the scope and timeline of annual monitoring contracts and stewardship managements awards, provided they are under \$5,000, can be approved by the Executive Director. Because continuation of this position through the end of the fiscal year will require allocating up to \$16,000, staff is seeking Board approval for this expense.

This allocation will not impact our monitoring partners' reimbursements for monitoring, as the funds are pulled from the Board-approved contingency line item as well as uncontracted funds. Total expenses for the fiscal will remain below the 4% cap set by the Board at its May 2020 meeting.

Staff Recommendation

Approve allocation of up to \$16,000 of stewardship spending in FY20-21 to continue temporary GIS position.

Board Action Needed

Approve, deny, or amend Staff Recommendation