

AGENDA
North Carolina Land and Water Fund
Restoration, Innovative Stormwater, and Planning Committee Meeting
April 19, 2023, 1:00 p.m. – 4:00 p.m.

This meeting will be held via teleconference and will have a physical location on the 4th floor of the Nature Research Center located at 121 West Jones Street, Raleigh, NC in room 4508. If any member of the public would like to join the meeting via MS Teams or in person, please contact Terri Murray at teresa.murray@ncdcr.gov or 919-707-9400 in advance for links or directions.

Committee Members:

Renee Kumor (Chair), Ann Browning, Mike Rusher, Darrel Williams, John Wilson

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, and if you are joining remotely, mute your audio and turn off your video unless you are called upon to speak

e) Revisions, additions, and adoption of the agenda

2) Executive Director's update (Will Summer)

PUBLIC COMMENTS

The public is invited to make comments to the Board (Chair)

The NCLWF policy manual states that 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. Comments will be limited to three minutes per person.

BUSINESS

1) Program Manager's Update (Steve Bevington)

Staff will provide the committee with a program update.

2) Town of Apex Change Request (Steve Bevington)

Staff will present a request from the Town of Apex to reduce the scope of project 2021-401, the restoration of an unnamed tributary to Beaver Creek.

3) North Carolina Coastal Federation - Matching Funds Exception Request (Will Price)

Staff will present a request from the North Carolina Coastal Federation to approve the use of funding from a direct appropriation Project (2022-DA01) as match funding for an existing Project (2021-414). A letter from the North Carolina Coastal Federation to the Board is attached.

4) Reconsideration of Appraisal Requirements for Restoration and Innovative Stormwater Projects (Steve Bevington)

Staff will present draft contract language stating appraisal requirements for restoration and innovative stormwater projects.

5) Broadening Innovative Stormwater Program Expectations (Steve Bevington/Damon Hearne)

Staff will discuss possible guidance for potential ISW applicants for the 2024 cycle.

6) Improving Access to NCLWF Funds and Benefits (Will Summer)

Staff will provide information as requested at the previous meeting and continue this discussion.

ADJOURNMENT

Action Item**Staff Member: Steve Bevington**

Agenda Item 2) Change Request – Town of Apex (2021-401)**Background**

As part of the 2021 NCLWF award cycle, the Town of Apex was awarded \$409,658 towards a \$686,408 project to restore 2,400 linear feet of an incised and laterally unstable tributary to Beaver Creek. Much of the project area is within a town park that had been purchased and placed under conservation easement in 2005 as part of an NCLWF grant when the Seymour tract was secured (project number 2004A-001).

After the award, the Town of Apex received bids to design and construct the project and was confronted with higher than expected construction costs. Seeking additional funds, the town delayed the project and requested an extension from NCLWF for the date to enter into a construction contract. This request was granted by the NCLWF Board, and the contract now includes a deadline to enter into a construction contract by June 30, 2023.

As the Town of Apex has yet to identify funding sources to make up the difference between available and projected project costs, they have requested that either the scope of the project be reduced by 30% or that the contract be converted into a “design only” type award with \$60,000 of NCLWF funds matched with \$50,000 of town funds. The existing contract calls for a match of 40% while the design line only would be a match of 55%.

If design work is able to proceed, the Town of Apex indicated they would likely seek construction funds from NCLWF in the 2024 or 2025 award cycle.

Staff recommendation

Staff recommends that the Town of Apex be given until June 30, 2023 to secure additional funding and enter into a construction contract for the scope as described in the executed contract. Otherwise, the existing contract will be amended to fund only design and permitting for the 2,400 linear foot project area in the amount of \$60,000 with matching funds of \$50,000.

Committee action needed

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

Action Item**Staff Member: Will Price**

Agenda Item 3) North Carolina Coastal Federation - Matching Funds Exception Request**Background**

In 2021, the North Carolina Coastal Federation (NCCF) was awarded an NCLWF grant to restore portions of the Fort Macon shoreline (2021-414). During the 2021 application period, NCCF sought funding from two other grant sources to serve as match for this NCLWF project: the National Fish and Wildlife Foundation and the NC Department of Justice Environmental Enhancement Grant Program. During roughly the same time period in late 2021, NCCF learned that they received the NCLWF grant for this project, but not the other grants that the NCCF planned on using as matching funds.

As a result, NCCF then sought and secured funding from the NC General Assembly for their work at Fort Macon, as well as other several at other sites. NCCF's intention was to use a portion of this direct appropriation as the match funding that was promised for the 2021 grant. However, the General Assembly chose to assign administration of the direct appropriation to NCLWF (2022-DA01).

Because the General Assembly administered the direct appropriation through the NCLWF, NCCF now finds itself in a position where the funding they secured to match the 2021 Fort Macon project is now also being administered through the NCLWF. As a result, NCCF now requires an exception to our practice in order to use the direct appropriation (2022-DA01) as matching funds for their existing project (2021-414).

Staff recommendation

Staff recommends granting an exception to NCCF to use a portion of the direct appropriation (2022-DA01) as matching funds for the Fort Macon project (2021-414) and amending the existing contract for the Fort Macon project to update match sources and add special conditions to ensure that grant funding administered through the Fort Macon contract and the direct appropriation contract are clearly delineated.

Committee action needed

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

Attachments: Letter from NCCF Executive Director Todd Miller detailing this request.

Request to the NC Land and Water Fund Board

Re: NCLWF 2021-414; NCCF - Fort Macon Living Shoreline (**Original Contract**)
NCLWF 2022-DA01; NCCF - Living Shorelines (**Matching State Appropriation Contract**)

On July 11, 2022, the N.C. General Assembly awarded \$6.5 million to the North Carolina Coastal Federation through the N.C. Department of Natural and Cultural Resources (NCDNCR) for living shoreline work at four sites that included Fort Macon State Park. Federation staff met with NCDNCR on August 8, 2022 to discuss the contract. At that meeting, it was determined that the contract would be administered through the NC Land and Water Fund (NCLWF) and it was executed on October 20, 2022 (NCLWF 2022-DA01).

The Federation respectfully requests that the funds appropriated by the N.C. General Assembly (NCLWF 2022-DA-01), which includes funds for the Fort Macon State Park Living Shoreline project, be allowed to be used as match for the original grant (NCLWF 2021-414), so that the project can be completed as originally proposed, even though both contracts are being administered by the NCLWF. In the past, the Federation has used legislative appropriations as match for NCLWF projects that were administered by other entities such as the N.C. Department of Environmental Quality. The Federation did not anticipate that having both contracts administered by NCLWF would prevent the use of additional appropriated state funds of as match for this NCLWF project.

Prior to the appropriation of these additional state funds, the Federation submitted three proposal applications to secure the required match for this project. Despite its best efforts, these proposals were not awarded. The Federation applied for matching funds from the National Fish & Wildlife Foundation on April 7, 2021 and April 21, 2022. It learned that these proposals were not awarded on May 19, 2021 and June 2, 2022, respectively. Matching funds from the N.C. Department of Justice Environmental Enhancement Grant Program were applied for on May 18, 2021 and they were also not awarded on November 9, 2021. It then turned to the N.C. General Assembly for this additional support which were appropriated directly to the Federation as part of the State's approved budget in November 2022.

This project will construct 2,716 feet of granite and QuickReef living shoreline sill with landward wetland plantings to protect and restore Fort Macon State Park's rapidly eroding soundside shoreline. The project will restore valuable salt marsh and oyster habitats that have been lost through time due to storms and rising water levels. These habitats will in turn help to improve water quality in Bogue Sound. See attached project details. The living shoreline has been designed and the Coastal Area Management Act (CAMA) Major Development Permit has been submitted and is expected in early February 2023. Contractors have been secured for the

construction, plantings and construction oversight and are scheduled to begin work as soon as the CAMA permit is received.

The current estimated design, permit, construction, planting and construction oversight is \$1,677,956.92 which is an increase from the originally proposed \$994,990 due to the significant rising material costs.

Thank you for your consideration of this request.

Sincerely,

Todd Miller
Executive Director

(Further project details provided by NCCF below)

Fort Macon State Park Living Shoreline, Project Specifics:

The subject soundside shoreline at Fort Macon is in direct need of stabilization and restoration due to ongoing, consistent erosion with no significant accretion of material. Additionally, in the recent past, tropical storm systems have caused rapid short-term erosion that has exacerbated the overall erosion rates. The subject shoreline extends from the USCG base to Tombstone Point at the confluence of Fishing Creek and Fort Macon Creek (Bogue Sound).

The proposed plan primarily includes construction of a rock sill system to be located at the approximate mean low water (MLW) line. The rock material is proposed to be a high-density granite-type rock that will be placed on top of geotextile underlayment matting to prevent unwanted settling. The normal lunar tide change is approximately 3.25-3.5 ft. The maximum base width of the rock sill would be 18 ft. The maximum height of the sill system would be 1.5 ft above the mean high tide line. This height will allow protection from high tide events, boat wake and storm wave forces. Due to the normal tidal swing, this sill height is important to protect the adjacent upland and wetland resources that are otherwise being lost. The sill system in this location will allow oyster recruitment and growth and is intended to generate an intertidal oyster reef. The end section of the shoreline protection area will include a section of Quickreef® instead of rock. Quickreef® is a concrete shoreline protection system that has been developed for living shoreline projects.

There will be ten (10) gaps (10 ft wide) in the sill system as shown on the conceptual plan. The average spacing of the gaps is 250 ft long. To accommodate for having the longer sections of rock, we have widened the gaps to 10 ft from the typical 5 ft minimum. This sill system is within the intertidal area and therefore functions as a revetment and sill, depending on the tide. However, we will not cut off the tidal exchange of water by maintaining the 10 ft gaps which will allow consistent tidal flow and passage of fish and marine organisms. Each of these gaps will have an overlapping offshore rock sill section (30 ft long). The purpose of the overlapping sections is to protect the gaps from scour and focused erosion. At each of the overlapping rock sections, we are proposing a timber pile with reflective “Caution Submerged Structure” signage. Land restoration areas will be addressed only after the rock work has been completed. This will include grading of erosion escarpments and native riparian plantings in the general areas shown on the conceptual plan. If budgets allow, clean sand will be imported (from an off-site borrow area) to create some of the slopes from the top of the existing erosion escarpments down to the mean high tide line. There will be no sand placed in the water or in any location waterward from the mean high tide line. If the budgets do not allow for this component of the project, this will not affect the alignment or the sill system or the native plantings.

Rock will be transported to the Site by truck. There are four designated stockpile areas where materials will be placed before an excavator will move the rock to build the sill system.

Action Item**Staff Member: Steve Bevington**

Agenda Item 4) Reconsideration of Appraisal Requirements for Restoration and Innovative Stormwater Projects**Background**

For many years the Restoration and Innovative Stormwater (ISW) programs have used the same general appraisal policy as the Acquisition Program for valuing easements donated as match. Grantees are permitted to use either the tax valuation assessed by a county tax assessor's office or a recent appraisal for the parcel in question. Appraisals are required if the total value of any land or interest in land to be donated as match exceeds \$100,000. Because riparian buffer areas donated as match are usually relatively small percentages of parcel area, this threshold has rarely been reached. However, with increases in land prices and applications now more frequently proposing entire floodplain tracts as match, appraisal requirements for restoration and ISW projects will become more frequent.

As the State does not pay for land or easement acquisition for our restoration projects, but accepts land value only as match, there is a concern that stricter appraisal requirements designed for the Acquisition Program add an unnecessary cost and delay projects.

At the March 7, 2023, meeting of the Restoration, Innovative Stormwater, and Planning Committee, staff reported on this issue. The Committee requested that staff draft contract language, as related to appraisals, so as to prevent undue burden on applicants proposing to provide land value to NCLWF projects as match but to also ensure that contracts require appraisals in cases where relatively large property values are involved. Draft language is provided in red-line form in the attachment below.

Staff recommendation

Staff recommends raising the threshold for appraisal requirements for restoration and ISW projects where property interest is being provided as match from \$100,000 to \$500,000 and to remove the requirement for a second appraisal for Restoration and ISW contracts that do not involve the acquisition of property with NCLWF funds.

Committee action needed

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

Attachments: Appraisal language from current NCLWF Restoration Contract Template Budget with redline edits developed by staff.

From Restoration Contract Template - Exhibit B, Budget:

The value of a Conservation Easement (or other legal instrument acceptable to the NCLWF) donated to the Project by a property owner or acquired by the Grant Recipient may be claimed as matching funds contributed to the Project only after the Grant Recipient has provided to the NCLWF all of the following information for that donated easement:

- (a) calculated area of the easement;
- (b) copy of the easement document as recorded by the County Register of Deeds; and
- (c) basis for the claimed value of the easement, which may be in the form of:
 - i. current property tax valuation assessed by the County Tax Assessor's Office showing total value of land and/or improvements, if any, with indicated year of the actual assessment. This option is available for land acquisitions for which the total price for any given parcel does not exceed ~~\$100,000~~\$500,000. An appraisal is required if the total value of any given parcel exceeds ~~\$100,000~~\$500,000. See additional details on appraisal requirements below; or
 - ii. if a recent appraisal has been prepared, the appraisal summary may be used, instead of the tax valuation.

Appraisal Requirements. Appraisals are required if the total value of any land or interest in land to be donated as match exceeds ~~\$100,000~~\$500,000. Appraisals must be satisfactory to the NCLWF, performed by a North Carolina general certified appraiser in accordance with Uniform Standards of Professional Appraisal Practice, and are subject to review by the State Property Office. ~~Two (2) appraisals are required if the value of the interest being donated is greater than \$500,000.~~ All Appraisals should be forwarded to the NCLWF as soon as possible, but no later than ninety (90) days prior to the anticipated recordation date, and the State should be included as an authorized user of all Appraisals. All Appraisals should either reflect the market value of the Property or Conservation Agreement at the time of donation. At the discretion of the NCLWF, the Grant Recipient may be required to amend or update the Appraisal. The Grant Recipient specifically acknowledges that the NCLWF's acceptance of the matching funds value for the land acquisition is contingent upon approval of the appraised value by the State Property Office.

Action Item

Staff Member: Steve Bevington / Damon Hearne

Agenda Item 5) Broadening Innovative Stormwater Program Expectations

Background

The committee has expressed interest in recent years in broadening the definition of “innovative” to provide more stormwater project opportunities. Particularly to provide demonstration of stormwater technologies that, while somewhat conventional in some parts of the state, may not be commonly used in other areas. Staff will review steps taken in this direction with current guidance and propose additional items for consideration.

Committee action needed

Review the information presented and provide direction as needed for future guidance.

Action Item

Staff Member: Will Summer

Agenda Item 6) Improving Access to NCLWF Funds and Benefits

Background

At the previous committee meeting, members heard a presentation from NC DEQ about their Community Mapping System. After the presentation and discussion, staff was charged with reviewing how this and other mapping tools are used for decision making in other grant programs as well as providing a clearer working definition of terms, such as disadvantaged or underserved. Staff will report as directed and continue to assist with this discussion.

Committee action needed

Review the information presented and provide further direction for staff to develop draft recommendations for the next committee meeting.