

AGENDA
North Carolina Land and Water Fund
Restoration, Innovative Stormwater, and Planning Committee Meeting
November 10, 2020, 9:00 – 11:00 a.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 or 919-707-9121 to request a teleconference meeting invitation/call-in or instructions to attend the meeting in person.

Committee Members:

Renee Kumor (Chair), Greer Cawood, Judith Kennedy, Darrel Williams

- 1) Call to Order** (Chair – Renee Kumor)
 - a) Welcome
 - b) Compliance with General Statute § 138A-15
General Statute § 138A-15 mandates that the Chair inquire as to whether any Trustee knows of any conflict of interest or the appearance of a conflict of interest with respect to matters on the agenda. If any Trustee knows of a conflict of interest or the appearance of a conflict of interest, please state so at this time.
 - c) Revisions, Additions, and Adoption of the Agenda
- 2) Public Comments** (Chair – Renee Kumor)
The Public Is Invited to Make Comments to the Committee – (Three Minutes per Person)
- 3) Executive Director's Update** (Walter Clark)
- 4) New River Conservancy Contract Amendment Request – 2018-410** (Steve Bevington, Damon Hearne) Staff will present a request to reduce and rework the scope of work for the project as land ownership has changed.
- 5) Review of condemnation policy** (Will Summer, Steve Bevington)
- 6) Adjourn**

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

Agenda Item: 4) 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on the privately held left bank of the project area meant that a letter of commitment to participate in the project was no longer valid.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 meet with NRC and New River Park staff onsite 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, supports NRC's proposed scope, plan and budget as proposed.

Staff recommendation: Approve the reduced scope and budget of a 1,800 linear project on and adjacent the New River State Park with 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.

Committee action needed:

Recommendation to the Board to approve, deny, or amend staff 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, Steve Bevington

Information Item: 5) 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. This policy is attached below.

Recently several potential uses of condemnation, or eminent domain, have been considered by parties involved in NCLWF restoration projects. While there is no immediate decision that appears likely to come before the Board in the near future, Staff would like to take this opportunity to briefly review with the Restoration Committee the concept and likely effects of the Condemnation Policy.

Committee action needed:

None

Attachment: Current NCLWF policy related to condemnation

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).