

15A NCAC 02R .0403 DONATION OF PROPERTY

(a) If approved by the Council of State, donations or dedications of interests in real property for the purposes of restoration, enhancement, or preservation may be accepted by the Secretary or the Secretary's designee if the property is consistent with the Basinwide Restoration Plan for the appropriate river basin subject to the factors listed in Paragraphs (b) and (c) of this Rule, or if the property interest is being donated to satisfy a condition of a certification issued by the Department pursuant to 33 U.S.C. Section 1341.

(b) The factors that shall be considered by the Secretary or the Secretary's designee in determining whether to accept donations or dedications of interests in real property for the purposes of wetland or riparian area restoration or enhancement include the following:

- (1) whether the property is:
 - (A) adjacent to, or will become a part of, a Department compensatory mitigation project;
 - (B) adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan;
 - (C) adjacent to or includes property on which rare aquatic species, as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina," is known to have been found; or
 - (D) is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program at <https://ncnhde.natureserve.org>. These documents are hereby incorporated by reference, including subsequent amendments and editions. Copies of these documents may be obtained from the Department of Natural and Cultural Resources Division of Land and Water Stewardship at <http://www.ncnhp.org/references/publications/rare-animal-list> and <http://www.ncnhp.org/references/publications/rare-plant-list>;
- (2) whether the size of the property is at least five contiguous acres;
- (3) the likelihood that the site can be successfully restored or enhanced, based on hydrology, soils, and vegetation;
- (4) the intensity of activities required to successfully restore or enhance the site. Sites requiring extreme measures for successful restoration, such as removal of structures or infrastructure, shall not be accepted;
- (5) the absence of cultural and historic resources;
- (6) the prior, current, and future land use of the donated property and adjacent properties;
- (7) the existence of federally or state-listed sensitive, endangered, or threatened species, or their critical habitat;
- (8) the potential for enhancement of natural resource values of public lands;
- (9) the absence of hazardous substance and solid waste;
- (10) whether the property is adjacent to non-supporting, partially supporting, or support-threatened waters as designated by the Division of Water Resources pursuant to 40 CFR 131.10(a) through (g). This material is available from the Department of Environmental Quality, Division of Water Resources, at <https://deq.nc.gov/about/divisions/water-resources/planning/classification-standards/surface-water-standards>;
- (11) the absence of encumbrances and conditions on the transfer of the property interests; and
- (12) whether provisions have been made by the landowner for the long-term maintenance and management of the property.

(c) The factors that shall be considered by the Secretary or the Secretary's designee in determining whether to accept donations or dedications of interests in real property for the purpose of preservation of existing wetland and riparian areas include the following:

- (1) whether the property has clearly identifiable unique wetland or riparian area functions or values, such as federally or state-listed sensitive, endangered, or threatened species, or their critical habitat;
- (2) the potential for enhancement of natural resource values of public lands;
- (3) whether the property is:
 - (A) adjacent to, or will become a part of, a Department-approved restoration or preservation project;
 - (B) adjacent to or includes a sensitive natural resource, as identified in the Basinwide Restoration Plan;

- (C) adjacent to or includes property on which rare aquatic species, as identified by the North Carolina Natural Heritage Program in the "Natural Heritage Program List of Rare Animal Species of North Carolina" or the "Natural Heritage Program List of the Rare Plant Species of North Carolina," is known to have been found; or
 - (D) is adjacent to or includes a Significant Natural Heritage Area as identified by the North Carolina Natural Heritage Program at <https://ncnhde.natureserve.org/>. These documents are hereby incorporated by reference, including subsequent amendments and editions. Copies of these documents may be obtained from the Department of Natural and Cultural Resources Division of Land and Water Stewardship at 1651 Mail Service Center Raleigh, NC 27603 or at <http://www.ncnhp.org/references/publications/rare-animal-list> and <http://www.ncnhp.org/references/publications/rare-plant-list>;
 - (4) whether the size of the property is at least five contiguous acres;
 - (5) whether the property is under imminent threat of degradation;
 - (6) the prior, current, and future land use of the donated property and adjacent properties;
 - (7) the absence of extensive structures and infrastructure;
 - (8) the absence of hazardous substance and solid waste;
 - (9) the absence of cultural and historic resources;
 - (10) whether the property is adjacent to non-supporting, partially supporting, or support-threatened waters as designated by the Division of Water Resources pursuant to 40 CFR 131.10(a) through (g);
 - (11) the absence of encumbrances and conditions on the transfer of the property interests; and
 - (12) whether provisions have been made by the landowner for the long-term maintenance and management of the property.
- (d) At the expense of the applicant or donor, the following information shall be submitted with any proposal for donations or dedications of interest in real property:
- (1) documentation that the property meets the criteria in Paragraph (b) and (c) of this Rule;
 - (2) US Geologic Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, and the presence of existing structures and easements;
 - (3) a current property survey performed in accordance with the requirements of the North Carolina Department of Administration, State Property Office as identified by the North Carolina Board of Examiners for Engineers and Surveyors in "Standards of Practice for Land Surveying in North Carolina," incorporated by reference including subsequent amendments and editions. Copies may be obtained at no charge from the North Carolina State Board of Examiners for Engineers and Surveyors, www.ncbels.org;
 - (4) a current appraisal of the value of the property performed in accordance with the requirements of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional Appraisal Practice," incorporated by reference including subsequent amendments and editions. Copies may be obtained at no cost from the Appraisal Foundation, <http://www.appraisalfoundation.org>;
 - (5) a title certificate; and
 - (6) a Phase 1 Environmental Site Assessment documenting that the property does not contain structures that present health or safety problems to the general public. If wells, septic systems, water treatment systems, or water or sewer connections exist, they shall be filled, remediated, or closed at owner's expense and in accordance with State and local health and safety regulations.
- (e) In addition to the factors outlined in Paragraphs (b) through (d) of this Rule, the Secretary or the Secretary's designee shall consider the following factors when determining whether to accept a donation of interest in real property to satisfy compensatory mitigation requirements:
- (1) whether restoration of the property will offset the adverse impacts of the permitted project; and
 - (2) whether the adverse impacts of the permitted project are within the same 8-digit cataloging unit as the property proposed for donation.
- (f) Donations of interests in real property for the purpose of satisfying compensatory mitigation requirements shall only be considered for acceptance if the proposed donation offsets an impact for which an application has already been made to the United States Army Corps of Engineers under 33 U.S.C. Section 1344 or to the Department under 33 U.S.C. Section 1341.

(g) For the purposes of satisfying compensatory mitigation requirements through the donation of interests in real property requiring restoration, enhancement, or preservation, the size of property to be donated shall equal or exceed the acreage of wetland required to be mitigated under the approved permit, and every parcel shall be a minimum of five contiguous acres in size.

(h) Donation of real property interests to satisfy compensatory mitigation requirements shall be accepted only if such property meets the requirements of Paragraphs (a) through (i) of this Rule and 15A NCAC 02H .0506(h) and if it satisfies the compensatory mitigation requirements of the approved permit.

(i) The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if:

- (1) the conservation easement is granted in perpetuity and the property to be encumbered meets the requirements of Paragraphs (a) through (j) of this Rule; or
- (2) if the property interest is being donated to satisfy a condition of a certification issued by the Department pursuant to 33 U.S.C. Section 1341.

(j) Donation of interests in real property may contribute to or fulfill compensatory mitigation requirements that may be satisfied through payment of a fee according to the Rate Schedule in Rule .0402(c) of this Section. The value of the property interest shall be determined by an appraisal performed in accordance with Subparagraph (d)(4) of this Rule. The required fee as calculated in accordance with Rule .0402(c) of this Section shall be satisfied if the appraised value of the donated property interest is equal to or greater than the fee. If the appraised value of the donated property interest is less than the designated fee requirement as calculated in accordance with Rule .0402(c) of this Section, the applicant shall pay the difference between the calculated fee and the appraised value of the property interest.

*History Note: Authority G.S. 143-214.11; 143-214.12; 143-215.3;
Eff. August 1, 1998;
Readopted Eff. March 1, 2018.*