

South Carolina Department of Natural Resources External Guidance on Land Acquisition

The South Carolina Department of Natural Resources (SCDNR) works with partners to acquire real property for conservation, public hunting, boat landings, and other uses consistent with our mission and as permitted by law. This guidance document is intended to introduce you to some of the standard needs and process required for SCDNR to purchase or accept donated real property interests. This guidance document should not be viewed as legal advice or the only needs associated with SCDNR land acquisition, which must be determined on a case-by-case basis.

1. **Notice.** SCDNR cannot give any legal, tax, or financial advice and it is in the best interest of the landowner to consult with an attorney and tax or financial advisor about the transaction.

2. **Process of Acquiring Land:**
 - a. *SCDNR Staff* – Staff need to visit the land proposed for acquisition to make a preliminary evaluation of its potential use, needs, and benefits.

 - b. *Heritage Trust Program* – For land with special features recognized by the Heritage Trust Program, SCDNR may consider dedicating the property as a Heritage Preserve or giving further protection by committing it to the Heritage Trust. In order for either to occur, the Heritage Trust Advisory Board must first recommend such designations at one of its quarterly meetings. See generally S.C. Code Ann. § 51-17-10.

 - c. *SCDNR Board* – Any land acquisition, whether purchased or donated, must be approved by the SCDNR Board, which generally meets monthly. As required by law, even approval by the SCDNR Board is subject to subsequent external approvals.

 - d. *External Approvals* – Depending on the characteristics of the property and the transaction, support or authorization may be needed from school districts, County Council, Legislative Delegation, Archives and History Commission, State Department of Administration, State Joint Bond Review Committee, or State Fiscal Accountability Authority. See generally S.C. Code Ann. § 1-11-65.

 - e. *Time Line* – Due to the various submittal / agenda deadlines and meeting dates and the need to secure certain approvals in a particular order, completing this chain of approvals can take several months. This timeline is not subject to control by SCDNR.

3. **General Substantive Considerations:**
 - a. *Legal Description / Survey* – A clear description of the property must exist and recent surveys are preferred. A new survey may be required.

 - b. *Appraisal* – Under no circumstances may SCDNR acquire property for more than its appraised value. DNR does not require an appraisal if the property is donated but the donor may need one for business or tax purposes.

 - c. *Environmental Assessment* – A Phase I environmental assessment is required for any property to be acquired by SCDNR. Problematic findings identified in the assessment will need to be resolved prior to transfer to SCDNR. Additional assessment may be required based on the findings of the Phase I or unique site conditions.

- d. *Building Assessment Report* – If any buildings or other structures are present on the property, a building assessment report may be conducted for evaluation by the State Engineer’s Office. Any building code violation, electrical code violation, or other non-code deficiency cited in the report must be repaired by the grantor prior to conveyance of the property to SCDNR.
 - e. *Clear Title / Authority* – The grantor of the property must demonstrate clear title to the property (*e.g.* – no outstanding mortgages, liens, litigations, *etc.*) and authority to convey title (*e.g.* – appropriate corporate resolutions, *etc.*). Outstanding property rights will be closely evaluated for their impact on the intended use (*e.g.* – development agreements, mineral rights, deed restrictions, *etc.*).
 - f. *Indemnification / Hold Harmless* – SCDNR cannot agree to contractual terms, including any within the chain of title, that indemnify or hold harmless other parties.
4. Mitigation Banks and Permittee-Responsible Mitigation Projects: As allowed by law and consistent with SCDNR’s mission of promoting conservation and available public lands, the Department has provided a supporting role with numerous mitigation projects by accepting ownership of mitigation sites and agreeing to serve as the long-term steward in satisfaction of regulatory requirements. While appreciative of the benefits and opportunities provided by mitigation projects, these projects are unique and complicated and often involve substantial near and long-term costs to the Department. The early transactional costs normally have not been anticipated in the SCDNR budget. Recognizing the commercial nature of mitigation projects, SCDNR must at least shift the early costs it may accrue to the party undertaking the mitigation. See generally S.C. Code Ann. §§ 50-3-100 & -180 and 50-11-2200. In addition to the general guidance, these additional considerations apply to mitigation projects and the requestor needs to understand the following:
- a. *Management Status and Strategy* - Mitigation properties donated and accepted by the SCDNR are typically held as a Wildlife Management Area (WMA) and/or Heritage Preserve. As noted above, including a property as a Heritage Preserve (Dedicated or Trust Corpus properties) will require special considerations as provided in the Heritage Trust Act; therefore, holding the tract as a WMA is the default unless circumstances warrant otherwise.

The typical SCDNR management strategy involves the protection of the resource in addition to management. Traditional management involves the enhancement of natural systems to promote appropriate ecological conditions and improve habitat quality for wildlife and plant species. Judicious timber harvesting in uplands opens up the canopy and stimulates understory development that is beneficial to certain species of plants and animals, and can be a valuable tool in restoring degraded and altered ecosystems. SCDNR may thin and/or clearcut pine plantations. If plantations are removed, they may be allowed to regenerate naturally or be replanted to the appropriate ecological condition. The appropriate ecological condition will be determined by an examination of the soil type of each site and a topographical review of each area. This could include, for example, the conversion of predominately loblolly pine stands to longleaf pine or to a mixed hardwood community. Other enhancements may include under-planting in certain stands with sparse longleaf pine overstory and selective thinning to enhance natural stands that have achieved crown closure. Traditionally, hardwood stands are protected as a part of SCDNR management, unless tree species composition or stand health can be improved. The use of prescribed fire may also be implemented to restore and maintain fire-dependent ecosystems, promoting both species and habitat diversity. Prescribed fire, in addition to other appropriate control measures such as the use of herbicides or mechanical means (*i.e.* mowing, *etc.*), may be implemented to control exotic and invasive species. Other management activities may include research studies or the maintenance of roads for public and management access.

To ensure that the final mitigation plan accurately portrays the proposed management status and does not preclude SCDNR from typical management activities, the requestor should coordinate with SCDNR prior to submission of the final Permittee Responsible Mitigation Plan or the Mitigation Banking Instrument.

- b. *Public Access* – Once transferred to SCDNR, the mitigation property will be made available for public access.
- c. *No Responsibility for Restoration / Enhancement Activities* – In the commercial context, SCDNR will not accept the permittee’s responsibility for completing restoration/enhancement activities or annual monitoring and reporting.
- d. *New Survey and Boundary Marking*– The requestor must provide to SCDNR a new survey clearly establishing the boundaries of the property to be transferred to SCDNR and any other boundaries established by mitigation requirements (e.g. – wetland or buffer areas). Additionally, if a delineation or jurisdictional determination is conducted, the requestor must provide those to SCDNR. Any maps or surveys are to be provided to SCDNR in final hardcopy, pdf and in native digital format (e.g. complete CAD or GIS shapefiles). The requestor must also mark the property boundary and any other boundaries established by mitigation requirements.

SCDNR understands that during the restoration/enhancement work and the monitoring period that the mitigation property boundaries must be posted as a mitigation area under protection of the USACE. Immediately prior to the time of transfer, the requestor will need to update boundary signage with SCDNR-approved language and remove any contradictory signage.

- e. *Site Conditions* – Common site conditions which the mitigating party must address as specified by DNR prior to acceptance by SCDNR are: road and bridge conditions, drainage structures, removal or up-fitting of dilapidated structures, installation of boundary and/or interior gates, installation of firebreaks, marking of property boundaries. As a general rule, SCDNR prefers to manage land and not man-made structures, with the exception of cultural and archaeological features. On a case-by-case basis, SCDNR may choose to accept structures and other appurtenances from prior uses onsite, such as an existing shed, dock, or other structures that are structurally sound and beneficial to SCDNR or public use. Prior to finalizing the mitigation plan and mitigation boundaries, discussion and coordination should occur with SCDNR. If any buildings or other structures are present on the property and will be transferred to SCDNR, a building assessment report may be conducted for evaluation by the State Engineer’s Office prior to SCDNR acceptance. Coordination and discussion prior to finalizing the mitigation plan should occur to ensure that roads, bridges, low-flow crossings, gates, installation of fire breaks, up-fitting of dilapidated structures and other permanent structures are satisfactorily agreed upon for maintaining public access for perpetuity and that structures are sufficient for natural resource management activities, such as timber management, and long-term management responsibilities. If new structures or features are proposed, they must be designed and constructed to standards acceptable to the State Engineer and SCDNR so review and approval of design and construction will be needed. The conditions upon transfer to SCDNR of such features must be consistent with the long-term management and public use of the property. To ensure that the final mitigation plan adequately addresses SCDNR’s needs related to such structures, the requestor should coordinate with SCDNR prior to submission of the final Permittee Responsible Mitigation Plan or the Mitigation Banking Instrument.
- f. *Environmental Assessment* – The requestor will need to provide a satisfactory Phase I environmental assessment to SCDNR and SCDNR will need to be written into the Phase I as an additional intended user utilizing the following language: “The South Carolina Department of Natural Resources, as a prospective owner, is an additional intended user of this report and is authorized to share the report with other governmental bodies of the State of South Carolina as necessary for approvals required by law.” The

requestor shall be responsible for the costs of the Phase I environmental assessment and any remedial activities or further assessment recommended by such report and no costs for such will be assessed to SCDNR.

- g. *Easements, etc.* – All easements or severed property rights will be closely evaluated for consistency with mitigation requirements.
- h. *Closing Costs* – The mitigating party is expected to pay all closing costs of SCDNR, including SCDNR’s closing attorney fees and title insurance.
- i. *Stewardship Funds* – SCDNR typically will need an initial contribution of stewardship funds to establish appropriate management (*e.g.* - staff time, equipment, *etc.*) of newly acquired land until it can be incorporated into SCDNR’s budget. Please note that SCDNR does not seek reimbursement for staff time involved in coordinating the establishment of these projects.
- j. *Long-term Management* – Unless expressly agreed to, SCDNR does not accept responsibility for any maintenance or management requirements set forth in the Corps of Engineers approved mitigation plan. SCDNR can assume long-term management responsibilities for the property once mitigation actions have been completed and determined by the regulatory agencies to meet success criteria unless it has been expressly approved by the regulatory agencies that SCDNR is responsible for mitigation actions, monitoring and reporting, and SCDNR has consented to the same.
- k. *Time Line* – As noted above in 2(e) SCDNR does not control the regulatory or property acquisition approval time lines. It is generally preferable for permit applicants and their agents to work with SCDNR to align the regulatory tract and property acquisition time lines so that they are relatively in sync with each other. As a general rule, properties are transferred after a project is deemed a success by the USACE following the final monitoring report. However, projects will be assessed on a case-by-case basis for the timing of transfer. Once the property is transferred to SCDNR, it will be made available for public use.
- 1. *Preliminary Consultation* - To submit a property for consideration, please provide the following:
 - i. Latitude / Longitude
 - ii. Parcel information and / or map boundary
 - iii. Name of Current Property Owner
 - iv. Mitigation Work Plan of activities to occur (including map). If the project is Permittee Responsible Mitigation, also provide: i) project impacts (acreage/linear feet) and location and ii) name of the associated applicant
 - v. Requestor/Consultant contact information
 - vi. Status/Timeline for submitting the project to the USACE

Within 60 days following receipt of adequate information, SCDNR will provide a written response to the request to serve as potential long-term owner of the mitigation site; that response shall be non-binding and acceptance of property will be contingent upon satisfaction of the considerations described above and obtaining the required SCDNR internal and external approvals.