

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 will 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, Department of Administration, 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. 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 must 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: 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.
- a. *New Survey* – A new survey clearly establishing and marking the boundaries of the property subject to the mitigation requirements must be provided to SCDNR.
 - b. *Easements, etc.* – All easements or severed property rights will be closely evaluated for consistency with mitigation requirements.
 - c. *Closing Costs* – The mitigating party is expected to pay all closing costs of SCDNR, including SCDNR’s closing attorney fees and title insurance.
 - d. *Site Conditions* – Common site conditions which the mitigating party must address satisfactorily 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. 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.
 - e. *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.
 - f. *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/SCDHEC 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.
 - g. *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.