

Standard Operating Procedures for NCDENR Stewardship Sites

July 5, 2012

Purpose

These Standard Operating Procedures (SOP) have been established and agreed to by the North Carolina Office of Conservation, Planning, and Community Affairs Stewardship Program (Stewardship), the North Carolina Ecosystem Enhancement Program (EEP), the North Carolina Department of Transportation (NCDOT) and the North Carolina Interagency Review Team (NCIRT). This SOP applies to all projects that provide mitigation for impacts authorized by Department of Army permits. It establishes: methods for transferring closed out compensatory mitigation projects to Stewardship; responsibilities and timeframes for monitoring and managing subject projects; and processes for remedying violations of preservation mechanisms (conservation easement, registered deed restriction, etc.) on subject projects.

Transferring New Properties into the Stewardship Program

A site visit will be conducted by a representative of Stewardship on all properties prior to transfer into the Stewardship Program to ensure that the conditions for acceptance into the Program are satisfied. These criteria are described below. The property sponsor (EEP or NCDOT) and Stewardship staff will conduct the pre-closeout site visit to properties anticipated for transfer to Stewardship during the year prior to regulatory closeout for the project. During this visit, the Stewardship Program will identify stewardship-related concerns that might slow the transfer into the Program.

Stewardship Acceptance Conditions:

1. The property is deemed acceptable and is closed out by the NCIRT.
2. Existing violations must be resolved to the satisfaction of Stewardship and the NCIRT.
3. The project must be free of title or boundary (conservation boundary) disputes.
4. The project boundary must be clearly posted with conservation area signs. Signs must be placed so that the conservation boundary can be clearly identified, parallel to the conservation boundary line, facing away from the conservation area. Additionally, signs shall be spaced no more than 100 feet apart if not within line of sight of neighboring signs, or no more than 200 feet if neighboring signs are within line of sight. Signs are to be placed at each corner on both sides of any access area (e.g., cattle crossings). Two (2) signs will be placed on every conservation boundary corner if the change in direction at the corner is more than 30 degrees, with exceptions to be provided on a case-by-case basis for sites marked during closeout preparations. If the adjoining property is a subdivision, then a minimum of one sign shall be erected along each adjoining property owner's boundary.
5. A valid, enforceable, U.S. Army Corps of Engineers (USACE)-approved protection mechanism must exist, establishing rights of enforcement in the name of the State of North Carolina.

6. The property sponsor must notify the landowner in writing that the property is being transferred to Stewardship and reminding them of the conservation restrictions. This notification is required within 14 days of closeout approval.

Additionally, copies of the following items must be provided to Stewardship at time of transfer:

1. The official closeout approval letter, signed by the regulatory agencies.
2. Recorded conservation easement or deed restrictions and survey plats.
3. A geo-referenced shapefile of the project's boundary.
4. The baseline monitoring or closeout report for the project.

These items will be provided in electronic format by posting the applicable documents on the EEP web site or portal. Stewardship will issue a letter confirming acceptance into the Program once these conditions have been met.

Monitoring

Regular inspections of properties ensure that they are being maintained in a manner consistent with the terms of the protection mechanism. Without these inspections, maintenance of the property or violations of protection mechanism conditions cannot be addressed or resolved in a timely manner. The monitoring of sites may occur through on-the-ground (OTG) surveys and/or the use of aerial photographs or aerial inspections (helicopter or fixed wing aircraft). Minimum monitoring standards and expectations for the different monitoring techniques (OTG and aerial) are described below.

Minimum Monitoring Standards

- Regardless of method, monitoring events should not occur within 4 months of another monitoring event; a follow up violation inspection is not considered one of the monitoring events.
- At a minimum, all sites must be reviewed by aerial photography every year in which they are not inspected OTG utilizing the most recent aerial photos available.
- Aerial monitoring (photography or plane/helicopter) should always be followed by OTG monitoring for the next monitoring event, or as specified in the monitoring timeframes for the appropriate risk category.

On-the ground (OTG) Monitoring

The primary objective of monitoring is to ensure that all conditions of the protection mechanisms are being met. Regardless of monitoring frequency, monitoring events should not occur within 4 months of another monitoring event. A follow up violation inspection is not considered one of the monitoring events.

The following should be reviewed during OTG monitoring:

1. Conservation markers along the entire boundary must be present and legible, and any missing or defaced signs should be replaced.
2. If livestock can access land adjacent to the conservation easement, all fencing along the conservation boundary must be in good functional condition (e.g. electric fences are operational), and fences abutting the boundary must be in a condition where they provide protection from possible encroachment.
3. Access points (e.g., gates, cattle crossings, etc.) should be closed and secured, and conservation signage should be present at access locations.
4. Check for evidence of encroachments (e.g., vehicular access to include motorcycles and ATVs, access by livestock, structures, logging, clearing, dumping, etc.).
5. Changes to adjacent land use that may have an effect on the site that are evident from the site boundary should be noted (e.g., new clearing, addition of livestock, new construction, new roads, hydrologic manipulation such as stream diversion, ditching, levees, etc.). These activities may warrant communication with the responsible landowner.
6. Note any evidence of the use of herbicides or pesticides within the conservation boundary that is not consistent with the protection mechanism.
7. Evidence of naturally occurring disturbances (beaver activity, flooding, fire, storm, or earth movement, etc.) on the site should be noted.
8. Ensure the site is in compliance with the restrictions established within the protection mechanism.

Aerial Monitoring

Aerial monitoring includes inspection of the property from the air or a review of photography (aerial, satellite, etc.).

- Aerial inspections will be conducted only in leaf-off condition and not on any site where conditions prevent adequate review (e.g., heavy tree coverage, sites with aerial access impeded by power lines).
- If recent aerial photos (6 months old or less) cannot be obtained, OTG monitoring should be used instead.

The following should be reviewed during aerial monitoring, if possible, depending on the limitations of the aerial monitoring method employed (e.g., photo resolution, aircraft restrictions, etc.):

1. If visible, fencing within the conservation boundary should be assessed for breaks or other damage (tree fall, climbing vegetation, etc.).
2. If visible, check that access areas (e.g., gates, cattle crossings, etc.) are closed.
3. Check for evidence of encroachments (e.g., vehicular access to include motorcycles and ATVs, access by livestock, structures, logging, clearing, dumping, etc.).
4. Changes to adjacent land use that may have an effect on the site should be noted (e.g., new clearing, addition of livestock, new construction, new roads, hydrologic

manipulation such as stream diversion, ditching, levees, etc.). These activities may warrant communication with the responsible landowner.

5. Note any evidence of the use of herbicides or pesticides within the conservation boundary that is not consistent with the protection mechanism.
6. Beaver activity or other natural disturbances should be noted.
7. Ensure the site is in compliance with the restrictions established in the site protection mechanism.

Regardless of the monitoring method, results of monitoring events should be documented on forms developed specifically for monitoring of the preservation sites. Additionally, photographs and GPS coordinates of the locations of conditions noted in the monitoring report should be included.

Monitoring Timeframes

Frequency of monitoring is a key component to the long term success of the project. Inspections should be conducted often enough so that identified problems can be corrected in a timely manner. The monitoring frequency is determined based on analysis of risk of encroachment. Risk can be influenced by many factors including: size and shape of the protected area; number of landowners and adjacent landowners; accessibility; history of compliance, uses to which the property is subject, and adjacent land use.

For EEP sites, prior to the transfer of a property into Stewardship, a risk assessment will be conducted to determine the appropriate monitoring regime. EEP property section staff will attend a pre-closeout meeting to inspect the property boundary, ensure that the boundary is clearly marked, and resolve violations prior to the Stewardship inspection. Stewardship shall conduct a site review and issue a letter to EEP stating the site is acceptable for transfer to Stewardship and the risk category the site is being accepted in prior to the project's closeout review. If Stewardship deems the site is not yet acceptable for transfer, EEP will not submit the project for closeout review. Please note that these risk categories are for general consideration. During the closeout inspections, the USACE, in consultation with the NCIRT, may recommend that a site be placed in a particular risk category, as described below, based on the past history of the site or other site-specific factors. In such cases, the EEP will notify Stewardship and record the risk modification in the final closeout letter to the IRT with a copy to Stewardship. Additionally, Stewardship in consultation with the project sponsor retains the right to reassign any site into a higher or lower risk category at any point, based on changing factors (e.g., landowner relations, adjacent land use) and/or the monitoring history of the site.

Initial Monitoring Requirements – With the exceptions identified below, all properties that are transferred into Stewardship will initially be monitored on an annual basis for three years, utilizing OTG monitoring techniques. This will be done to establish a monitoring baseline and a relationship with the property owner. Following the initial monitoring period, sites will be reevaluated and placed into the appropriate risk category.

The following describes the four (4) risk categories and their recommended monitoring frequencies and methods:

Very High Risk Properties – This category includes all properties where more than 50% of the conservation boundary abuts municipal parks, golf courses, subdivisions, or any combination of these land uses. This category also includes all sites abutting current or future (if known) livestock operations where more than 50% of the project is subject to access by livestock in the event of a fence failure. These sites shall be monitored semi-annually, using only OTG monitoring.

High Risk Properties – This category includes all properties where 20 to 50% of the conservation boundary abuts municipal parks, golf courses, subdivisions, or any combination of these land uses. This category also includes all sites abutting current or future (if known) livestock operations where 20 to 50% of the project is subject to access by livestock in the event of a fence failure. Additionally, this category includes any property where at least 50% of the conservation boundary is abutting unfenced agricultural (non-pasture) land. These sites shall be monitored annually, using only OTG monitoring.

Medium Risk – This category includes all properties not included in one of the other risk categories. These sites will be monitored OTG at a minimum of every other year. Aerial reviews may be conducted in the years when OTG monitoring is not completed.

Low Risk Properties – This category includes all properties where the more than 50% of the conservation boundary is surrounded by State or Federal property or properties that are in natural condition that are protected by conservation mechanisms and are managed for conservation (not including sites managed for timber). In addition, this category may include properties that Stewardship identifies as low risk based on their past monitoring history or other site-specific factors. These sites shall be monitored OTG at least every third year. Aerial monitoring may be conducted on these sites in years where OTG monitoring is not conducted.

Factors Affecting Risk Category

Change in Ownership – A change in the ownership of the underlying fee will result in monitoring of the property OTG for each of the two years following the change, in part to establish a relationship with the new owner. The Stewardship Program will contact the owner as quickly as possible to advise them of the protection mechanism restrictions and answer their questions. After the second year, the site will be placed in one of the risk categories based on the assessed risk.

Change in Adjacent Land Use – In the event that adjacent land use changes are discovered during monitoring, the site risk will be reevaluated to determine if the monitoring frequency should be changed to a different risk category.

Violations – Should a major violation (as described later in this document) be discovered, the site shall be monitored OTG semi-annually each year for the two years following resolution of the violation. Should a minor violation (as described later in this document) be discovered, the site shall be monitored at least annually each year for the two years following resolution of the violation. Once sites have completed the post-violation monitoring, they will be assigned by Stewardship into the appropriate risk category. Some properties may have had a violation during the pre-closeout monitoring phases. If the violation occurred more than two years before closeout, then the property will be considered violation-free for assignment into one of the risk categories, otherwise monitoring shall continue as described above for the type of violation that occurred.

Reporting

An annual report will be provided to the USACE Mitigation Project Manager with cop to EEP and NCDOT documenting the status of monitoring activities for the Program. The report does not have to provide status updates for all individual sites, but should summarize monitoring activities (including which sites were reviewed, when, and how) and describe violations.

Additionally, at a minimum, the following should be included in the Annual Report:

- Protection mechanism violations (encroachments, clearing, dumping, structures, motorized vehicle access, etc.)
- Violation status and proposed resolution
- Funding (budget, amount spent on monitoring, enforcement, legal action, etc.)
- Any other information pertinent to stewardship
- Recommended adjustments to funding

Management

Most projects are designed to be self-sustaining and will not require management actions other than monitoring to confirm that the terms and conditions of the conservation easement or deed restrictions are being met. However, some projects may have significant habitats that must be actively managed in order to satisfy the requirements set forth in permit special conditions and/or the mitigation plan. For projects without an endowment, proposed management and maintenance activities not required by the protection mechanism or mitigation plan (e.g. prescribed fire, invasive species control, on-going beaver management) will be presented to and approved by executive leadership of the project sponsor and Stewardship prior to their implementation. For projects that are stewarded through endowments, the endowment fund is expected to cover the cost of such unique management activities.

Beaver Activity

Beaver management activities may be required if hydrologic trespass occurs. Funding for beaver management will be addressed on a case-by-case basis at the executive level of the Stewardship Program and the project sponsor as the need arises.

Violations

Conservation easements, deed restrictions, and other legal protection mechanisms are agreements designed to protect the conservation values of a property as specified in the document. Any activity on, or use of, the conservation area inconsistent with the purposes of the specific protection mechanism constitutes a violation. All correspondence regarding violations and resolutions, whether major or minor, shall be maintained by the Stewardship Program. Inspectors shall provide copies of any correspondence regarding protection mechanism violations to the Stewardship Program Administrator as soon as practicable. The source of funding for any expenses that could result from violations will be identified before remedies are implemented, but generally the costs shall be paid by the party responsible for the violation, as provided in the protection mechanism.

The Stewardship Program recognizes two categories of violations:

Minor Violations

Activities or uses that violate the conditions of the protection mechanism, but do not impact the ecological functions of the project are considered minor. Examples include but are not limited to: construction of insignificant structures; incidental tree cutting; short-term livestock access that does not result in structural or habitat damage; dumping of small amounts of material (e.g., fill, construction debris, trash, etc.); and destruction of conservation marker signs and/or fences.

Guidance for Minor Violation Resolution

The protection mechanism shall be the primary reference for enforcement and remedies. Timeframes for corrective actions that are specified in the protection mechanism take precedence for determining how quickly each violation must be resolved. If guidance is not included in the mechanism, the goal for resolution for minor violations is within 90 days of discovery of the violation. Most minor violations can be remedied by removing the structure, repairing fences, posting signs and replanting as needed. These enforcement decisions can be handled by the monitoring agent or the Stewardship Program Manager.

All minor violations should be discussed with the Stewardship Program Manager and documented by photos and written correspondence. A letter detailing the violation will be sent to the landowner. If the landowner is unresponsive after the first letter, then a follow up letter shall be sent via certified mail with a copy furnished to the USACE Mitigation Project Manager. If the landowner continues to be unresponsive or is uncooperative, the matter will be referred to the executive level of Stewardship and the project sponsor for resolution, which may include legal action brought against the party responsible for the violation and/or the Grantor in the case of a conservation easement. The remedies of minor violations shall be documented by photos and written correspondence.

Major Violations

Activities or uses that violate the conditions of the protection mechanism and negatively impact the ecological functions of the project are considered major violations. Examples include: construction of a significant structure (house, pond, and road); timbering; fence destruction or removal; draining or destruction of wetlands; excavation; and substantial dumping of wastes.

Guidance for Major Violation Resolution

All major violations should be discussed with the Stewardship Program Manager and documented by photos and written correspondence. All major violations will be reported as soon as possible to the executive level of Stewardship, the project sponsor, and the NCIRT, as appropriate. The protection mechanism shall be the primary reference for enforcement and remedies. Enforcement options will include personal contact with the landowner or responsible party; certified mail to the property owner/responsible party describing the violation and necessary corrective action (with a copy furnished to the USACE and/or Division of Water Quality, if appropriate); or legal action if warranted. If needed, the project sponsor will provide legal assistance. Timeframes for corrective actions that are specified in the protection mechanism take precedence for determining how quickly to respond to an identified violation. If guidance is not in the protection mechanism, a resolution plan for major violations shall be submitted by the property owner to the Stewardship Program within 90 days of the date of the certified letter described above. The Stewardship Program will consult with the project sponsor to determine the most appropriate corrective action and may request assistance from the project sponsor and the appropriate regulatory agency to develop remediation plans.

If the landowner or responsible party does not meet deadlines identified in the correspondence, the Stewardship Program will request assistance from the N.C. Department of Justice (NCDOJ). The NCDOJ may issue temporary restraining orders or injunctions to ensure corrective actions are undertaken. In addition, the Stewardship Program will refer water quality, land quality, or Clean Water Act violations to the appropriate state or federal enforcement authorities.

Implementation of the resolution plan may take several years, particularly for activities such as tree planting. Performance standards may be required as part of the enforcement of violations.