

Comments and Responses on NCDOT RFP for NC 540 lawsuit settlement

March 10, 2020

Q1: Who are the members of the “Neuse & Tar-Pamlico River Basin partnership”?

A1: The Partnership includes the North Carolina Natural Heritage Program, the North Carolina Chapter of the Nature Conservancy, the Tar River Land Conservancy, the Triangle Land Conservancy, the North Carolina Division of Parks and Recreation, and the US Fish and Wildlife Service.

Q2: Is it the responsibility of the offeror to contract with a long-term steward and fund an endowment for that purpose?

A2: No it is not. NCDOT will work with the Partnership to provide an endowment and long-term steward, which will most likely be a land trust or other non-profit land conservation group.

Q3: NCDOT requires secured rights to land in the form of a deed, conservation easement, or option that secures rights to the land. Do the secured rights to the land need to be recorded? Is a recorded memorandum of option acceptable to demonstrate secured rights to the land?

A3: Yes. A recorded Memorandum of option is acceptable. Ultimately, the ownership or easement will be granted to the long-term steward, which will most likely be a land trust or other non-profit land conservation group.

Q4: NCDOT contemplates the purchase of streams that feed into the mainstems but state that they will not be considered in the evaluation of proposals. If we think we can provide all requested mitigation along the mainstems is there a reason we should submit mitigation along tributary streams? Can we just leave Category 2 blank on the price proposals? Please expand upon the need for tributary streams.

A4: The contemplation of mitigation along tributary streams was only to add value to land that may need to be purchased to acquire the target mitigation along the main stem. (This is assuming a landowner may only want to sell entire parcels, not just the riparian area along the main stem.) Mitigation along the tributaries does not count towards the requested mitigation in the RFP. There is no guarantee that NCDOT will purchase the mitigation developed along the tributaries. Yes, Category 2 can be left blank.

Q5: The ‘no adjustment’ categories of Group A and Group B are the same scenario. Is the intention for Group B to be sites that would fit Group A but only control one side of the stream? Can DOT expand on the scenarios that would fit Categories A and B?

A5: Yes, the difference between Group A and Group B was intended to be the control of both sides vs one side of the stream. Group A represents the preferred scenario. Group B

would be sites that have at least 300-foot-wide riparian buffer, control along both sides of the stream, and length at least 5000 feet. The second priority in Group A would be 300 feet of riparian buffer, control along both sides, and length less than 5000 feet but at least 2500 feet. Group B was intended to represent sites that have at least 300-foot-wide riparian buffer, control along one side of the stream, and length at least 5000 feet. The second priority in Group B would be sites that have at least 300-foot-wide riparian buffer, control along one side of the stream, and length less than 5000 feet but at least 2500 feet.

Q6: If all the mitigation requested is submitted within Group A will any Group B sites be considered?

A6: Group A is the preferred scenario and will be used first to fulfill the mitigation need. Any site with buffers less than 300 feet or with buffer only along one side will need to be reviewed by the Partnership to determine if it offers exceptional resource value.

Q7: Does a Site need to be contiguous? For example, for a Group A 5,000 ft Site with 300 ft buffers on both sides, does this all need to be contiguous? If a site needs to be contiguous, can a site have small portions that may not meet 300-foot buffers. Specifically, a 5,000 ft Group A site with 300 ft buffers has either less than 300 feet for a short section or only a buffer on one side for a short section, would this still be considered a Group A site (let's say no more than 5% of the 5,000 LF)?

A7: Yes, a site needs to be continuous. Small portions could be less than 300 feet, but a specific percentage has not been considered. Areas within the riparian buffer that are currently open space or agriculture can be included if the area can be secured and reforested for at least 300 feet from the top of the bank of the main stem, and the site would still be considered a Group A site. Any site with buffers less than 300 feet or with buffer only along one side will need to be reviewed by the Partnership to determine if it offers exceptional resource value.

Q8: Do any of the following scenarios fall out of the intention for Group A sites:

1. The proposed site has the following characteristics: >5,000 ft of stream; 300 foot buffers on both sides for most of the length; one parcel on only one side of the river cannot be placed under easement creating a 300 ft 'gap' on one side and maybe a couple of areas with less than 300 feet on one side
2. The proposed site has the following characteristics: >5,000 ft of stream; 300 foot buffers on both sides for most of the length; ~ 1,000 ft of stream has 100 ft buffers on one side b/c outside of the 100 ft there is a hillslope with home sites; the other side of the river is floodplain and buffers could be extended out to 500 ft to protect the entire floodplain and get the total 600 feet and all the bottomland buffer
3. The proposed site has the following characteristics: >5,000 ft of stream; 300 foot buffers on both sides for most of the length (see some exceptions above), and then we would like to add another, say, 2,000 LF on a connected downstream nice hardwood parcel that is only

one side, as long as we have the core 5000 feet, can we add some more B type length to it without kicking ourselves out of Group A or can we give options for that sort of thing?

A8: For all scenarios other than the preferred Group A, the site will need to be reviewed by the Partnership to determine if it offers exceptional resource value.

For the site in described in 1., the value depends on what the land use is in the “gap”. If it is something like utility line, it would be fairly benign and acceptable contrasted to a “gap” which consisted of a water treatment plant or commercial development. Any site with buffers less than 300 feet or with buffer only along one side will need to be reviewed by the Partnership to determine if it offers exceptional resource value.

For the site described in 2., assuming the channel had not been relocated, a section of stream running along one side of the floodplain would be considered a natural condition and would not exclude a site from Group A under the conditions described.

For the site described in 3., a site that meets the preferred scenario of Group A would not be excluded by the addition of parcels that do not meet those conditions.

Q9: The site value rating as described in the RFP makes no adjustments for the proportion of wetland and FEMA floodplain. Given the development restrictions associated with these constraints, wetlands and floodplains will presumably be much cheaper to acquire than non-FEMA uplands, but will offer less ecological protection. Considering that riverfront uplands are among the most at-risk lands for development, would it make sense to incorporate a value rating adjustment for the percentage of non-FEMA uplands on a proposed site?

A9: The Partnership interested in protecting the aquatic habitat along the reaches identified and did not express a preference for upland vs wetland buffer. This type of site characteristic can be highlighted as a benefit in a proposal.

Q10: What happens if pricing for 35,000 “linear feet” exceeds the \$5m settlement? How do you determine the value of a foot if its preserved? If we can get a site with 35,000 feet of stream and it’s all preservation, are we simply buying the land and then donating it to a land conservancy with the easement and stream feet going to DOT? And in that case is IRT approval needed at all?

A10: This RFP is not related to the \$5 million portion of the settlement. The RFP requires, as stated in the settlement, 35,000 linear feet of stream mitigation. There is not a dollar amount specified. The Partnership considers stream preservation to provide the highest resource value to address the concerns related to the settlement. There will be no IRT review. A site must provide preservation along the main stem of the indicated stream reaches.

Q11: DOT’s lists the Priority Aquatic Habitat Area (Priority Area) as three 12-Digit HUCs that make up a small portion of two 10-Digit HUCs identified in the draft Conservation Plan, 0302020115 & 0302020116. Should the Priority Area to include the remaining 12-Digit HUCs of

each parent 10-Digit HUC? This addition would only slightly expand DOT's focus area, while aligning the work with the NCWRC's watershed planning, which was completed at the 10-Digit HUC level.

A11: Sites outside of the targeted 12-digit hydrologic units, 030202011504, 030202011505, 030202011602, but within the 10-digit hydrologic units 0302020115 and 0302020116, must initially be reviewed by the Neuse & Tar-Pamlico River Basin partnership to determine if the site offers exceptional species benefit. If the determination is positive, the site then will be evaluated by NCDOT staff according to the Evaluation Process described in Section 8.

Q12: How is the DOT defining/calculating the width of riparian buffer of the RFP? Is the 300 feet of buffer required calculated as a cumulative sum from both sides of the river or is it 300 feet for each side?

A12: The requirement is 300 feet on each side of the main stem. The exception is described in A8 above, where the stream is naturally located to one side of the floodplain and the entire floodplain is included in the site proposal.

Q13: Does DOT want to see bottomland hardwood forest reestablished if the land is cleared for agriculture or is in a pine plantation?

A13: Yes, reforestation of open or agricultural land is acceptable within the 300-foot buffer.

Q14: Will DOT require a specific easement template to be utilized for the project or is the provider free to choose as long as it meets certain basic requirements for land protection and stewardship?

A14: We are developing the template conservation easement with the Partnership. The restrictions will be comparable to restrictions in the CWMTF template easement.