

NC DEPARTMENT OF ENVIRONMENTAL QUALITY
OBTAINING PERMISSION TO IMPACT A CONSERVATION EASEMENT

The Department recognizes that on occasion it may be necessary to impact a conservation easement for the installation or maintenance of public infrastructure. A proposal to impact a conservation easement will be considered only if it serves the public interest, provides a public or community benefit, and it can be demonstrated that no other practicable alternatives exist. All proposals shall describe the steps taken in their alignment selection and design development processes to avoid and/or minimize impacts to the conservation easement and/or mitigation assets contained therein. The process for obtaining permission to impact on a conservation easement is further described below:

1. Proposer must provide the easement holder (State of NC, DEQ Stewardship) and the mitigation credit holder (DEQ Division of Mitigation Services) an impact proposal which includes an overlay of the area of proposed impact shown with the conservation easement boundary. The proposal shall follow this outline:
 - A. Purpose and Need of Project
 - B. Proposed Impacts to the Conservation Easement (square feet)
 - C. Proposed Impacts to Mitigation Assets (square feet and/or linear feet)
 - D. Avoidance and Minimization Measures
 - E. Vicinity Map
 - F. Project Design Sheets with easement impacts indicated
 - G. Remediation Plan for Temporary easement impacts
 - H. Survey Plat of Proposed Easement Take
 - I. Other Supporting Documentation

Note: Temporary and permanent impacts to the conservation easement must be quantified in square feet. Temporary and permanent impacts to mitigation assets must be quantified in linear feet for streams, square footage for wetlands and/or riparian buffers. For bridge/culvert installations a copy of the engineering report(s) for determining size and placement must also be provided.

2. If DEQ Stewardship, Division of Mitigation Services, and the Proposer can agree on a project alignment, avoidance and minimization measures, and compensation the Proposer finalizes the proposal. Once finalized, DEQ Stewardship and/or Division of Mitigation Services will request time with the Interagency Review Team (IRT) to present the proposal. The purpose of the presentation is to provide the IRT an overview of the proposed project, impacts to the easement area, answer project specific questions, and obtain IRT mitigation requirements (if any) for impacting the compensatory mitigation site. The IRT Chair typically issues a notification of mitigation requirements to the Proposer, DEQ Stewardship and/or Division of Mitigation Services within 30 days of the presentation.

Note: The IRT has consistently assessed a penalty of at least 2:1 for impacting mitigation assets.

3. Upon receipt of IRT mitigation requirements the Proposer shall provide the following to DEQ:
 - A. Compensation for IRT mitigation requirements
 - B. A finalized survey plat and metes and bounds description of the easement take
 - C. Compensation for take of conservation easement
4. An invoice for IRT mitigation requirements will be prepared by Division of Mitigation Services and sent to the Proposer. Upon receipt of compensation for IRT mitigation requirements DEQ (Stewardship or Division of Mitigation Services) submits a request for Right of Entry or Temporary Construction Easement to the State Property Office. The Proposer's survey and metes and bounds description of the easement encroachment is provided with this request.

Note: The State Property Office will not issue a Right of Entry or Temporary Construction Easement until authorized by DEQ Stewardship and/or Mitigation Services.

5. The State Property Office appraises the value of the easement take, prepares required paperwork, and collects compensation.
6. Upon receipt of payment for easement take the State Property Office issues the Right of Entry/Temporary Construction Easement.

Note: In all cases the Proposer will bear all costs associated with survey, recordation, repair and/or remediation of damage to the conservation easement and mitigation credits. The Proposer must obtain the Right of Entry/Temporary Construction Easement prior to mobilizing work within the conservation easement.