



Agenda Action Form Overview

Durham County holds a farmland conservation easement totaling 69 acres on the Van and Edna Ellis farm, which was completed in December 2013. The farm easement was acquired with the grant assistance of the federal farm and ranchland program (FFRP). The Ellis's are interested in permitting Wildlands Engineering (Wildlands) to perform a stream restoration on two sections of stream on their farm totaling 3,818 ft (0.72 mile) upstream from Lake Michie.

The stream restoration would be undertaken by Wildlands under a contract with the State of North Carolina Division of Mitigation Services and the US Army Corps of Engineers to provide compensatory mitigation credits by restoring streams on the Ellis farm and five other properties. The proposed stream restoration project is compatible with the overall conservation purposes of the farm easement, which are primarily protection of agricultural and forest lands and water quality values.

Durham County's conservation easement is permanent but allows potential amendments to address issues or activities that were not anticipated at the time the easement was finalized. An additional phrase, as outlined below, is required to be added to the county's agricultural easement to meet state and federal requirements of the stream restoration.

Background/Justification

The Ellis's are interested in permitting Wildlands to perform a stream restoration on two sections of stream on their farm totaling 3,818 feet (0.72 mile). Wildlands is planning the stream restoration project on a total of six different properties along 1.9 miles of stream that is upstream from Lake Michie, a drinking water supply for Durham residents. The stream restoration would have a long-term positive impact on the water quality for this section of Dry Creek, including reducing stream bank erosion, improving floodplain function, and providing additional vegetation enhancements. One of the five other properties is Paul Adcock's farm, shown on the attached context map in Exhibit A. This farm has a county conservation easement in progress which has also received federal grant funds. In this case, since the stream restoration project and farmland easement are both in progress, the stream easement area will not be included in the County's farmland easement area, so no later modifications would be needed.

The stream restoration project on the Ellis farm requires that an additional easement be placed on 10 acres along the stream where the restoration work will take place. The State of NC requires a stream restoration conservation easement to permanently protect the improvements/enhancement on the 10-acre area. The county's conservation easement explicitly permits additional easements so long as the new easement is compatible with the conservation purposes the underlying farm easement. OSRE staff have reviewed the detailed request and determined that the proposed additional easement is compatible with, and supportive of, the overall conservation values of the property and county-held agricultural easement. The additional easement along the stream would be subordinate to the County's conservation easement.

The State and the Army Corps of Engineers require that additional language be added to the County's easement in Section 3.8 Water Rights. The additional language is underlined below:



3.8. Water Rights. Except for the water rights given to the State of NC in the Deed of Conservation Easement and Right of Access recorded in the Durham County Register of Deeds at Book _____, Page _____, Grantor shall retain and reserve the right to use any appurtenant water rights sufficient to maintain the agricultural productivity of the Protected Property. Grantor shall not transfer, encumber, lease, sell or otherwise separate such water rights from title to the Protected Property itself.

The county's conservation easement outlines a process for approval of any amendments that requires that the State NRCS Office to approve any amendments and be a signatory to the document. The State NRCS office reviewed the Ellis amendment request and in January 2017 concurred with the County that the request is consistent with the farm easement. The state NRCS Office forwarded the request to the USDA national office, which provided their concurrence in June 2017. Since the national approval was granted, Wildlands has been completing their design work and securing required permits and are now ready to proceed with the physical restoration work, which will take place in the fall of 2019

Policy Impact

The addition of a stream restoration easement on the Ellis farm directly supports the County's Strategic Plan Goal 4, Environmental Stewardship, Strategy 4.1A "Water Quality – Maintain, protect, and improve water quality" by permitting a stream restoration project on the Ellis farm, which is upstream from Lake Michie, a drinking water source for most Durham residents.

Procurement (Acquisition) Background

n/a

Fiscal Impact

n/a

Recommendation

The County Manager recommends that the Board approve the additional conservation easement on the Van Ellis Farm, approve the amended language to Section 3.8 of the easement, and authorize the Manager to sign the amendment.