



Legislation Text

File #: 19-0218, **Version:** 1

Item:

Conservation Easement Amendment for the Van Ellis Farm

Date of BOCC Meeting: May 13, 2019

Request for Board Action:

The Board is requested to approve an amendment to the county's existing conservation easement on the Van Ellis farm. The Ellis farm was protected with a conservation easement on 69.1 acres that was completed in December 2013. The farm easement was acquired with the grant assistance from the USDA NRCS's federal farm and ranchland protection program. The Ellis's are interested in permitting Wildlands Engineering (Wildlands) to perform a restoration on two stream sections of Dry Creek, totaling 3,818 linear feet and upstream from Lake Michie. The stream restoration would have a long-term positive impact on the water quality on the farm and downstream by reducing stream bank erosion, improving the floodplain function, and providing additional vegetation enhancements. 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 four other downstream properties.

The stream restoration project requires that an additional easement be conveyed for the stream restoration area totaling 10 acres. 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 existing easement in Section 3.8 Water Rights (additional language is underlined): "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 requires any amendments also be reviewed and approved by the State NRCS office, and that they be a signatory to the document. The State NRCS office has reviewed the Ellis amendment request and concurred with the County that the request is consistent with the easement. The State NRCS Office forwarded the request to the USDA national office, which also approved the requested amendment. With national approval Wildlands has completed their design work, secured required permits, and are ready to proceed with the physical restoration work which will take place in the fall of 2019.

Alignment with Strategic Plan: The support 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.

Resource Persons: Jane Korest, Open Space & Real Estate Manager; Celeste Burns, Open Space and RE Coordinator, Peri Manns, Deputy Director of Engineering and Environmental Services

County Manager’s Recommendation: The County Manager recommends that the Board approve the additional conservation easement for limited portions of the Van Ellis Farm, approve the amended language to Section 3.8 of the easement, and authorize the Manager to sign the amendment.

County Manager: _____