



Date: October 2, 2023

To: Wanda S. Page, City Manager
Through: Bertha T. Johnson, Deputy City Manager
From: Jina B. Propst, Director, General Services Department
Subject: Ellerbe Creek Rookery Dedicated Nature Preserve

Executive Summary

The Ellerbe Creek Watershed Association (ECWA), along with representatives from the State of North Carolina Department of Natural and Cultural Resources (NCDCCR), had proposed that the City dedicate property as a State Natural Heritage Program Dedicated Nature Preserve (DNP). The dedication, as proposed, would encumber approximately 215 acres of City-owned property (“Property”) in perpetuity.

On 5/1/23, City Council directed staff to enter into negotiations with representatives of the State of North Carolina Department of Natural and Cultural Resources to dedicate the Property as a Dedicated Nature Preserve.

Since that time, General Services has worked with the City Attorney’s Office and State NCDENR Staff, along with personnel from the Ellerbe Creek Watershed Association (“ECWA”) to draft a final Articles of Dedication agreement (“Articles”) which will designate the Property as a Dedicated Nature Preserve.

Subsequent to the proposed City Council authorization granting authority for execution of the Articles, the State’s representatives will submit the Articles to the NCDCCR Cultural Resources Committee for acceptance of the Property as a DNP and approval of the Articles document. The NCDENR representative anticipates slating approval of the Articles at the Committee’s 11/1/23 meeting.

Execution of the Articles will enroll the City’s property into the State’s inventory of Dedicated Nature Preserves in accordance with the direction received by City Council.

The Articles document contains rules for management of the DNP. Subsequent to acceptance of the Property by the State as a DNP, those rules must be captured in a Management Plan document to be executed by the parties.

Staff are seeking authority to negotiate, draft, and execute a Management Plan for future use and protection of the property. The Management Plan will detail funding of future management and maintenance responsibilities of the DNP as well as delineate whether those responsibilities will be designated to City personnel or outsourced to a partner entity.

Motion

To authorize the City Manager to execute the Articles of Dedication with the State of North Carolina Department of Cultural Resources;

To authorize the City Manager to make changes to the Articles of Dedication, as required;

To authorize the City Manager to execute a Management Plan for the Dedicated Nature Preserve with the State of North Carolina Department of Cultural Resources; and

To authorize the City Manager to make changes to the Management Plan, as required.

Background

On 1/20/22, the NCDENR's Deputy Director for Natural Heritage along with ECWA's Land Protection Director appeared before City Council in an action brought forward by the City/County Planning Department, without staff recommendation. The presentation requested that ~284 acres of City-owned property be dedicated as a Dedicated Nature Preserve in perpetuity to protect three significant environmental facets: a heron and waterbird rookery, Ellerbe Creek, and a slope forest of mature trees.

After staff review of the DNP proposal as well as due diligence research with multiple departments including Transportation, Solid Waste, Water Management and the City Attorney's Office, additional information was gathered in order to evaluate the impacts of the proposal. During internal department review, issues related to access by the Water Management and Solid Waste departments and the identification of the planned future Northern Durham Parkway in the midst of the area proposed for protection were identified. The interdepartmental due diligence effort identified issues related to the City's existing and foreseeable use of this public property. In accordance with staff's findings, the area proposed for dedication was reduced to 215 acres.

While no request for funding is included or necessary at this time, a future encumbrance of funds will be required. Those costs are estimated to be \$50,000 for survey, plat and attorney title work.

Issues/Analysis

Dedication of the property as a Nature Preserve is a benefit to the City's sustainability efforts, as well as providing additional opportunities to increase the City's tree cover, protect wildlife and sensitive areas, increasing compliance with the Falls Lake rules, and providing possibilities for grant matching for funding management of the proposed preserve.

Examples of other local properties that are protected as Dedicated Nature Preserves are the Jordan Lake Game Lands, the Eno River State Park, and the Eno River Diabase Sill Plant Conservation Preserve.

The Northern Durham Parkway is slated to bisect the area initially proposed for dedication. The currently proposed Property for dedication includes a carve-out of 800' for future construction of the Parkway.

Alternatives

City Council could choose not to accept the staff recommendations. If the recommendations are not accepted, the property will not be dedicated as a nature preserve.

Financial Impact

No request for encumbrance of funds is included in this staff recommendation. Survey, plat and attorney title work will need to be completed to affirm the official boundaries of the DNP and prior to the parties finalizing a Management Plan. Securitization of funding sources for implementation costs of the DNP is in progress.

The North Carolina State draft budget contains an appropriation to pay for necessary costs. This funding will have no restrictions as to how the funds may be spent in association with the DNP; however, the appropriation will not be secure until the State budget is adopted. The City has also applied for a United States Department of Agriculture Urban and Community Forestry Grant in accordance with the Inflation Reduction Act in the amount of \$50,000 to pay for costs for the DNP. As a backup, the General Services Department will also enter in a new budget initiative to pay for costs to ensure funding is available.

Equal Business Opportunity Summary

Due to the nature of this agenda item, a review by the Finance Department for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting was not required.

Contractor Workforce Diversity & Hiring Practices

Due to the nature of this agenda item, obtaining Contractor Workforce Diversity & Hiring Practices information is not applicable.

Attachments

Articles of Dedication

Management Plan

Map of Proposed Dedicated Nature Preserve