

**Item Title:** Authorize Extension of Open Space Funding Agreement with N.C. Department of Transportation (NCDOT)

**Specific Action Requested:**

**That the Board of Commissioners authorizes the County Manager to execute an extension of the Wake County Open Space Funding Agreement with the N.C. Department of Transportation, subject to terms and conditions acceptable to the County Attorney.**

**Item Summary:**

**Purpose:** The Board of Commissioners must approve funding agreements with other governmental entities.

**Background:** In August 2019, the N.C. Department of Transportation (NCDOT) and Sound Rivers, Inc., Center for Biological Diversity, and Clean Air Carolina, represented by the Southern Environmental Law Center, signed a settlement agreement allowing the N.C. Turnpike Authority to proceed with the Triangle Expressway Southeast Extension (also known as Complete 540) project while simultaneously setting in place protections for clean air, clean water and endangered aquatic species.

As a part of the settlement agreement, NCDOT agreed to support the acquisition of open space in Wake County by providing matching funds equal to 25% of funds expended by Wake County in calendar years 2020, 2021, 2022 and 2023 under the Wake County Public Open Space Preservation Program Policy.

Due to the COVID-19 pandemic and Wake County's response, the County did not acquire any open space in 2020, essentially losing a year of eligibility; in 2023, we requested and were provided a one-year extension through calendar year 2024. At this time, staff would like to request another one-year extension.

**Strategic Plan:** This action supports Growth, Land Use and Environment Goal 3: Protect 1,000 acres of green space, including open space, parks, greenways, farmland, and forests by 2029.

**Fiscal Impact:** NCDOT has already provided Wake County \$5 million, a sum equal to 25% of open space funds expected to be spent by Wake County in calendar years 2020, 2021, 2022, 2023, 2024 and now 2025 from the 2018 Parks Recreation Greenways and Open Space bond. No additional funding is added to the agreement, and future items will appropriate the funding received for specific open space acquisitions. Final County and State expenditures will be contingent on available financial resources.

### **Additional Information:**

The North Carolina Department of Transportation (NCDOT) has been planning for the extension and eventual final connection of the I-540 outer loop for several years. Areas that will be impacted by the construction of I-540 contain aquatic systems that are home to many rare and endangered species.

In early 2018, a lawsuit was filed by The Southern Environmental Law Center on behalf of Clean Air Carolina, Sound Rivers and the Center for Biological Diversity. The groups charged that the project would directly harm the threatened and endangered mussel species in Swift Creek and encourage sprawling development that would hurt the environment and air quality in the region.

As part of the lawsuit settlement, NCDOT agreed to more than two dozen steps to protect open space and wildlife habitat and reduce air and water pollution, including funding assistance to Wake County for new open space projects. The settlement agreement in part reads:

“NCDOT commits to support Wake County's goal of thirty percent (30%) open space by matching twenty-five (25) cents per dollar that Wake County spends through its Open Space Program during calendar years 2020, 2021, 2022, and 2023. The NCDOT matching funds will be contributed to the Wake County Open Space Program and, to the extent practicable, be used to purchase high value properties using Wake County's model, with additional emphasis on purchasing properties in close proximity to the Complete 540 project and Swift Creek.”

Since the County's open space program began in the early 2000's, over 9,800 acres has been protected as open space across the County. This protection has come in the form of fee simple acquisition or conservation easements, or through partnerships with local municipalities and non-profits. In November 2018, voters approved a \$120 million bond (“Bond”) for parks, recreation, greenways, and open space that will improve and expand recreational opportunities across the County. A portion of the Bond proceeds, \$20 million, was allocated for open space acquisition, and with NCDOT's pledged match of 25%, NCDOT provided Wake County \$5 million to be used in calendar years 2020, 2021, 2022, 2023.

Due to the COVID-19 pandemic and Wake County's response, the County did not acquire any open space in 2020, essentially losing a year of eligibility; in 2023, we requested and were provided a one-year extension through calendar year 2024.

	Amount	Acres	Running Total
Original NCDOT Funding	\$ 5,000,000		\$ 5,000,000
2021 (9 Approved Acquisitions)	-\$ 1,479,939	624.11	\$ 3,520,061
2022 (11 Approved Acquisitions)	-\$ 1,086,650	453.65	\$ 2,433,411
2023 (6 Approved Acquisitions)	-\$ 537,970	114.57	\$ 1,895,441
2024 (6 Approved Acquisitions)	-\$ 1,696,510	528.2	\$ 198,931
	Uncommitted Allocation		\$ 198,931

Of the six acquisitions the Board of Commissioners approved in 2024, staff has closed three, with three remaining; of these three, two are partnership deals which have run into delays due to surveying, the third was approved on October 21, 2024, and we're scheduling closing as soon as possible. In addition, staff is currently working on two acquisitions that would utilize the remaining NCDOT funding.

Staff requests a one-year extension, through the end of calendar year 2025, be requested in order to utilize the remaining NCDOT funding. No additional funding is being added to the agreement, and future Board of Commissioner items will appropriate the funding received for specific open space acquisitions. Final County and State expenditures will be contingent on available financial resources to fulfill this commitment in the agreed upon timeframes.

**Attachments:**

1. Complete 540 Settlement Agreement
2. OS Bond and NC DOT Funding Tracker