

N.D.A.G. Letter to Eiken (Jan. 23, 1985)

January 23, 1985

Doug Eiken, Director
North Dakota Parks and Recreation Department
Pinehurst Office Park
1424 West Century Avenue, Suite 202
Bismarck, North Dakota 58501

Dear Mr. Eiken:

Thank you for your letter of December 21, 1984, concerning cooperation by the Department with the Nature Conservancy in establishing nature preserves at the Cross Ranch.

The North Dakota Nature Preserves Act, N.D.C.C. Ch. 55-11, authorizes the North Dakota Parks and Recreation Department to establish a system of nature preserves. Pursuant to N.D.C.C. § 55-11-09, the department has the following powers and duties; among other things:

- "1. To formulate policies for the selection, acquisition, use, management, and protection of nature preserves.
2. To determine, supervise, and control the management of nature preserves. . .
5. To cooperate and contract with any agency, organization, or individual."

Apparently, the department has determined the Cross Ranch will best be managed as one unit, encompassing both Nature Conservancy land, and parks and recreation land under the Nature Conservancy management. Pursuant to N.D.C.C. § 55-11-09, the department has the authority to enter into a long--term agreement with the Nature Conservancy to manage department lands.

However, the dedication of State lands as a nature preserve and adoption of the articles of dedication must be accomplished by the North Dakota Parks and Recreation Department. N.D.C.C. § 55-11-06, states, in part, as follows:

"An estate, interest, or right in a natural area may be dedicated by any state agency having jurisdiction thereof, by any other unit of government within the state having jurisdiction thereof, and by any private owner thereof. A dedication shall be deemed effective, and a nature area shall become a

nature preserve, only upon acceptance of the articles of dedication by the department. . ."

N.D.C.C. § 55-11-07, states the requirements for the articles of dedication.

Since both, the department and the Nature Conservancy are owners of a portion of the land to be dedicated as a nature preserve, each must dedicate the properties. The department must accept the articles of dedication before any long term agreement is accomplished between the department and the Nature Conservancy concerning the management of the whole area of the nature preserve.

Additionally, N.D.C.C. § 55-11-12, requires the department, before it "shall grant any estate, interest, or right in a nature preserve or dispose of a nature preserve or of any estate, interest, or right therein as provided in Section 55-11-11," to give notice of the proposed action and an opportunity for a hearing (procedures outlined in N.D.C.C. § 55-11-12).

Further, N.D.C.C. §55-11-11, states, in part, as follows:

"Except as may otherwise be provided in the articles of dedication, the department may grant, for a fair consideration and upon such terms and conditions as it may determine, an estate, interest, or right in, or the department may dispose of, a nature preserve, but only after a finding by the department of the existence of an imperative and unavoidable public necessity of a higher nature, for such grant or disposition and such finding shall be made subject to the approval of the governor."

It is not clear whether N.D.C.C. §§ 55-11-11 and 55-11-12, apply only when a nature preserve is being taken for another use, nevertheless, the department should comply with the provisions of these two sections by holding a public hearing and getting the approval of the governor.

Finally, we suggest that management agreement between the Nature Conservancy and the North Dakota Parks and Recreation Department contain a clause, in paragraph II of the agreement, that the use of the nature preserve is for the benefit of the public and the people of the State of North Dakota, and that the nature preserve shall be managed and protected in the manner approved by, and subject to the rules and regulations established by, the department.

Sincerely,

Nicholas J. Spaeth

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