

A RESOLUTION APPROVING THE ADAMS TRACT MANAGEMENT PLAN
Resolution No. 169/2005-06

WHEREAS, the town staff has requested that the Mayor and Board of Aldermen review and approve the Adams Tract Management Plan; and

WHEREAS, the Mayor and Board of Aldermen have reviewed the management plan.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ALDERMEN OF THE TOWN OF CARRBORO:

Section 1. The Board hereby approves the Adams Tract Management Plan.

Section 2. This resolution shall become effective upon adoption.



Adams Tract – 3-Year Management Plan

20 June 2006



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Introduction and Overview

The Adams Tract is a relatively unique 27-acre plot of urban forest that over the course of the last century has metamorphosed from farmland / pasture to early successional forest and eventually to the current, mature, pine-dominated forest. It is located very close to Carrboro's densely populated downtown, and thus is well situated to become a refuge, biological preserve, and educational opportunity for all the citizens of Carrboro.

Funding from the state's Clean Water Management Trust Fund and from Orange County helped Carrboro pool the resources necessary to purchase the Adams Tract. Stipulations in the easements that accompanied that funding limit the uses to which the Town of Carrboro may put this property. *See Appendices V and VI for more information on these two easements.*

Within a context of sustainable uses and environmental improvements, the Town faces budget constraints on what it can spend to upgrade the Adams Tract. Work to be done on and in the park will thus be prioritized and then completed as funds become available.

The following 3-year management plan for the Adams Tract has been put together by Town of Carrboro staff in consultation with a "Management Plan Work Group." The Work Group was formed in July 2005 and is made up of representatives from relevant boards, commissions, and other stakeholder groups (*see Appendix I for a list of Work Group members*). Town staff have relied on the Work Group for much input, and have also sought out expert advice from other knowledgeable sources during the construction of this management plan. Staff have also made use of the Recreation and Parks Master Plan as well as ideas contained in the "Wilson Park Urban Forestry Plan" prepared by the North Carolina Division of Forest Resources for the Town of Carrboro.¹ Both documents have served and will continue to serve as starting points for discussions about what elements will ultimately be included on the list of additions, improvements, and annual maintenance that the town (with volunteer assistance where possible) will provide in this newly acquired urban forest park.

¹ Presented to the Town in April 2005.

The management plan includes a three-part analysis (objectives, implementation, and costs) of the entire project and then again for each of the following element areas: Signs & Amenities, Trail Work, Riparian Corridor Improvements, and Forest Management.

Objectives:

The three-year Adams Tract Management Plan will serve as an operational and financial blueprint for managing, protecting, and improving the Adams Tract as an open space dedicated to passive recreation.² To the extent possible, the plan envisions an urban park that will best fit needs, desires, and resources of the Town and its residents. With the initial goal of improving overall safety and trail conditions within the Adams Tract, the Town hopes eventually to add a number of other amenities to the park.

The Town certainly aims to meet the environmental and sustainability requirements imposed by the state and county easements on the parcel. Beyond (and through) those requirements, the Town's objective is to commit the resources necessary in a well-planned, thoughtful way to create a beautiful, long-lasting amenity as well as many opportunities for stewardship for the least cost to local taxpayers.

Action items included in the plan address improvements in the overall aesthetic value, ecological health, and safety on the property through the following:

- Installation of signs, interpretive stations, benches, and other amenities.
- Improvements in the existing trail system.
- Improvements / repairs in the Bolin Creek riparian corridor.
- Management of the forest ecosystem to maintain its health and safety as well as the healthy and safety of surrounding areas.

² Three years was chosen as a medium-term scope for a plan which would allow for the phasing in many of the initial elements planned for the Adams Tract.

Implementation

In the same manner that the Town uses its Capital Improvement Program (CIP), staff propose that the Town Board accept this document and use it to choose / fund elements of the management plan. Some signage and several of the other smaller elements may be fund-able through the 2005-2006 budget. Other elements may be selected for funding in the upcoming FY06-07 budget, other future budgets, or, particularly in the case of more costly items, worked into the Capital Improvement Program.

Costs

Creating a sustainable, educational urban forest park out of the Adams Tract will require a significant investment by the Town. There will be in-house material, labor, and equipment costs for many of the proposed elements, though *some of the costs shown below are not budget costs because the work can be done with existing equipment and labor*. For certain elements of the plan there will likely be contractual costs as well. Town staff are pursuing grant funding wherever possible for various elements of the plan. Estimated annual costs proposed in the three-year management plan are as follows:

Year of Plan	Elements Included	Proposed Total Cost
1	Entrance signs (3) ; steep trail closing and 2 signs ; new trail to bypass closed trail ; trail maintenance ; small bridge over Dry Gulch ; new trail along Dry Gulch	\$19,410
2	General maintenance of all trails and signs and other infrastructure ; additional trail closings ; wooden trail markers (20).	\$11,720³
3	General maintenance of all trails and signs and other infrastructure.	\$8,015⁴

As indicated in the table above, annual maintenance of trails and infrastructure will likely run in the \$5,000 - \$10,000 range in future years. The use of volunteer labor, if available, may defray long-term maintenance costs. Approximately 700 extra labor hours are required in the first year, 400 in the second year, and 300 annually thereafter (labor costs included in the above dollar figures), which means that Landscape & Grounds / Public Works will require additional / seasonal workers to continue completing their other work.

³ \$11,160 inflated 5% a year for 1 year.

⁴ \$7,270 inflated 5% a year for 2 years.

Items to consider for the future:

A number of items are not included in the three-year plan either because of cost considerations and/or because planning for them might itself well take longer than three years. Neither the FEMA Floodplain Modification Study (see Appendix II on P.15) or construction costs for a bridge over Bolin Creek are included in the study due to high costs and uncertainties that remain regarding feasibility.

Another project not included in this plan but which may be considered in the future is a paved or graded path along the OWASA easement from Wilson Park to Estes Drive Ext. (for a bike path and/or ADA accessible trail). The cost for this (inflated at 5% a year) might run from \$70,000 to well over \$100,000 depending on when it was completed.

Another project not included in the plan is the removal of several key invasive species. This project might take five or more years and cost over \$60,000 depending on the method used.

There are a number of other, smaller elements which have also not been included in this plan but which would be considered in the future as grant or Town budget funding becomes available. These elements include park benches, interpretive stations, and small loop trails.

Signs and Amenities

Objective(s)

The goal of installing signs in the park is to create and post clear information and guidelines that will help a variety of users get the most out of the park while neither harming the park nor hampering other's ability to enjoy the park. Amenities such as interpretive stations and benches will further expand the number of potential uses and users. The Town's objective is to get the most-needed signs installed first and to make them simultaneously obvious, unobtrusive, and difficult to remove. Other amenities can and will be installed as town finances and volunteered resources permit.

Implementation

The town has in-house resources to make and install some of the proposed signs and other amenities. Other signs and amenities will require additional planning and/or resources in future budgets.

Costs

Proposed sign / amenity costs in the first year of the 3-year management plan start under \$1,000 in the first year. Proposed signage costs in years two and three rise to \$4,240 and \$7,000, respectively. In the future, maintaining and replacing lost or damaged signs may run anywhere from several hundred to over a thousand dollars a year, depending on the number and type eventually put in. \$1,750 in state grant funding secured by the Friends of Bolin Creek (in addition to \$800 added by the group itself) has already helped the Town provide a bike rack for Wilson Park and the Adams Tract as well as historical and tree identification signs in the Adams Tract.

Signs & Amenities	1st year cost	2nd year cost	3rd year cost
3 minor entrance signs (w. rules)	\$550	\$300	\$300
3 no parking signs in impromptu Estes Dr. parking lot ⁵	\$0	\$1,150	\$1,100
2 internal trail closing signs (2 more in 2 nd year)	\$290	\$290	\$0
20 wooden post trail signs w. carved / painted indicators	\$0	\$1,800	\$550
Total	\$840	\$3,540	\$1,950
Total + 5% annual inflation	\$840	\$3,720	\$2,150

⁵ Extra is budgeted because some problems with vandalism or sign removal are anticipated.

Trail Work

Objective(s)

The objective of the proposed trail work is to create a sustainable set of forest trails that offer low-impact access throughout the Adams Tract.⁶ This will involve closing some existing trails, creating others, and raising the quality of most if not all the trails. The goal is also to mobilize groups of volunteers who can help take on the relatively straightforward task of trail maintenance and build community while minimizing the cost to the town.

Implementation

Some trail work needs to be done as soon as possible. Town staff would aim to quickly build a bypass to the 100-150 yards of trail that end in a steep, heavily eroded (and steadily eroding) trail down to Bolin Creek. As soon as the bypass is finished, the existing trail will be closed.

In year two, several other sections of trail may also be closed, including a heavily rutted trail connecting the tract to the unofficial parking lot on Estes Drive Ext. as well as a trail spur from the main trail to the railroad tracks. See P.6 for discussion of possible future construction of loop trails, interpretive stations, and a bike path and/or ADA compliant trail along the OWASA easement between Wilson Park and Estes Drive Ext. *See next page for map showing trail locations / proposals.*

To successfully build community *while* building and maintaining the park's trails, the Town will look to coordinate volunteer labor, particularly from neighborhoods surrounding the Adams Tract and groups that regularly use it.⁷

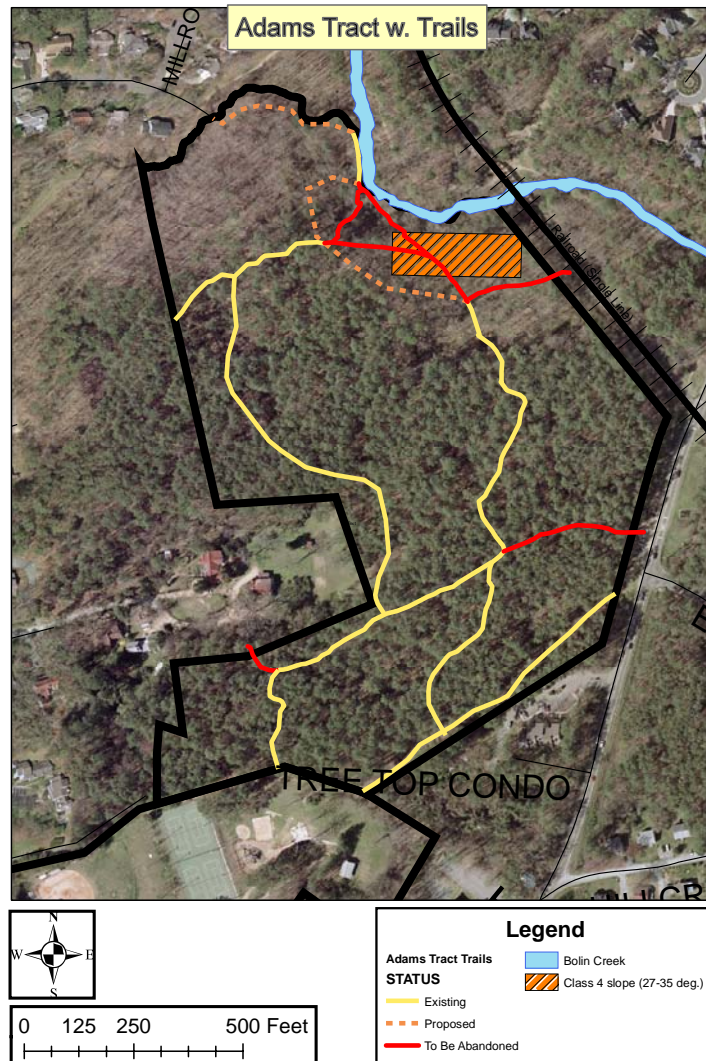
Costs

Trail work may run close to \$15,000 in the first year, but once certain trails are closed and new trails are constructed, annual maintenance costs may not run much more than \$5,000 and may be decreased depending on the availability of volunteer labor.

⁶ These will still be rough, forest trails and not easily accessible by people with limited mobility.

⁷ A number of community groups, including the Trailheads running group and the Bolin Forest HOA, have indicated their willingness to volunteer their labor in the Adams Tract.

Trail Work	1st year cost	2nd year cost	3rd year cost
Steep trail closing	\$1,600	\$500	\$500
Closing of trail from main trail down to RR tracks	\$0	\$700	\$150
Rutted Estes Dr. trail closing	\$0	\$1,250	\$650
Construction of trail along Dry Gulch	\$2,100	\$0	\$0
Construction of steep trail bypass	\$5,300	\$0	\$0
<i>Annual trail maintenance</i>	\$5,100	\$5,100	\$5,100
Total	\$14,100	\$7,550	\$6,400
Total w. 5% annual inflation	\$14,100	\$7,925	\$7050



Riparian Corridor Improvements (along Bolin Creek)

Objective(s)

The overarching objective of any riparian corridor changes along Bolin Creek would be to minimize the impact that users of the Adams Tract have on the water quality in the creek. This goal is stipulated in the Clean Water Management Trust Fund easement and is also consistent with the Town's general environmental policies.

The Town's more specific objective will be to halt, to the extent practicable, all traffic moving along (within 15 feet of the banks, according to the state conservation easement) and/or over Bolin Creek. Reaching this objective might include moving trails, building new trails, eventually building one or two bridges, and possibly engaging in some creek bank restoration. This and other trail work discussed in the "Trail Work" section of this plan will help to preserve the health of the riparian corridor surrounding Bolin Creek.

Creek bank restoration along the 400-500ft. of bank that the town owns seems unnecessary and impractical at this time. It is unnecessary because the bank of the stream is not highly eroded or eroding at a fast rate.⁸ It would be impractical because the town only owns one bank of the stream and because the area is wooded enough that getting heavy machinery in to do restoration work would cause more erosion and bank damage than it would be able to remediate.

Implementation

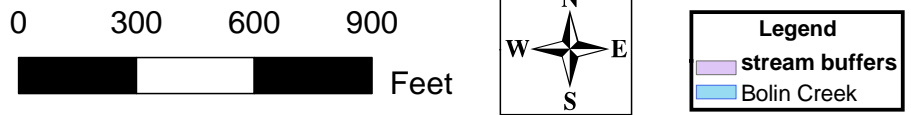
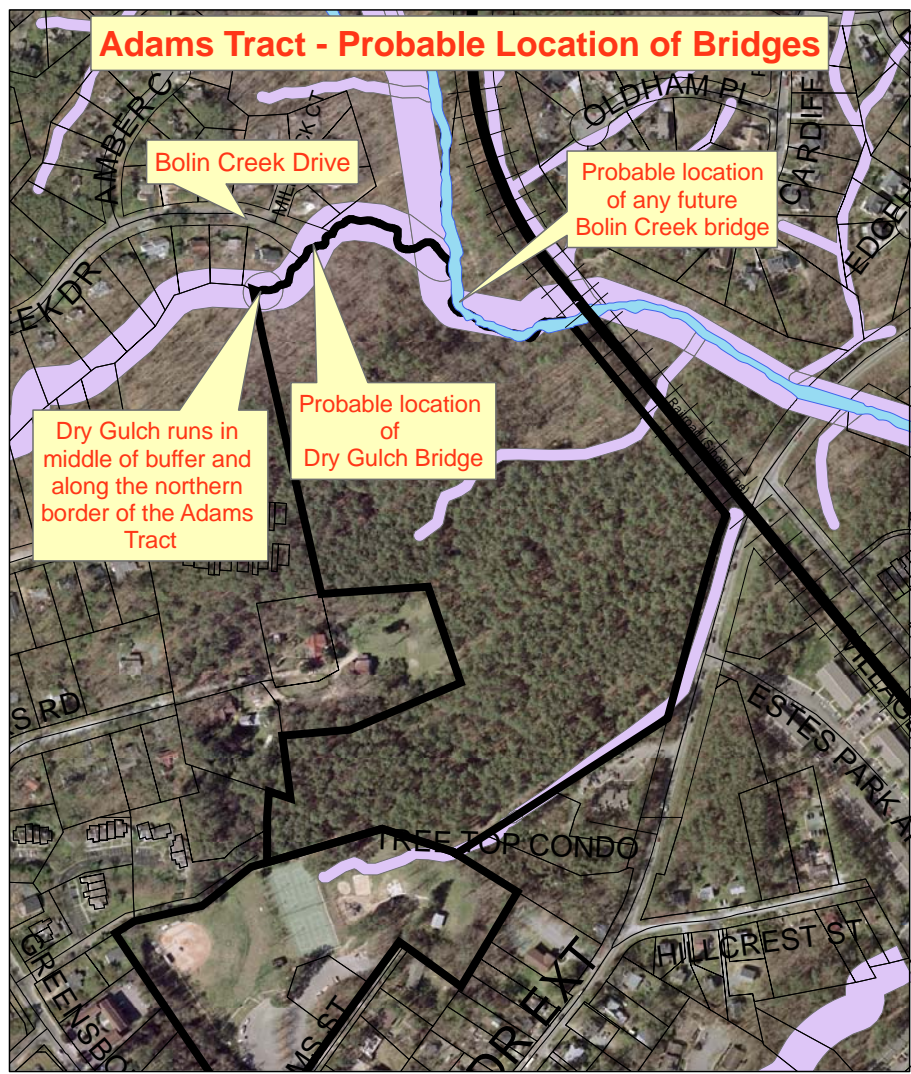
A small bridge crossing Dry Gulch at the point where the Bolin Creek Drive right-of-way comes down into the gulch can be built by Town staff, and the building of this bridge will be coordinated with the construction of a trail along the pedestrian easement along Dry Gulch. A larger bridge over Bolin Creek may be built in the future, but no specific plans are in place at this time. *See next page for map of the proposed bridge locations.*

Costs

The smaller bridge over Dry Gulch would likely cost in the neighborhood of \$2,000 and may require annual maintenance.

⁸ Erosion on trails further up and away from the stream will be reduced through trail closings and other trail work.

Bolin Creek / Riparian Corridor Improvements	1st year cost	2nd year cost	3rd year cost
Small bridge over Dry Gulch Where the Bolin Creek Dr. right-of-way comes down to Dry Gulch.	\$2,300	\$450	\$450
Total	\$2,300	\$200	\$200
Total w. 5% annual inflation	\$2,300	\$210	\$220



Forest Management

Objective(s)

The main objective of the forestry management work Town staff will undertake in the Adams Tract is to maintain and ensure the long-term health of the native growth in the park as well as the safety of park users and residents living along park borders. More specifically, the objectives will be to remove some undergrowth and dead trees to the extent that they represent safety hazards to park users or nearby residents.⁹ Some of what is removed may be stacked to create additional wildlife habitat.

At this point, Town staff are recommending further study of invasive species present in the Adams Tract before addressing their control or removal. *See Appendix III for more information on these invasives and the reasoning behind this recommendation.*

Implementation

Most of the habitat creation as well as the removal of undergrowth and other hazards that will be necessary / practical within the Adams Tract can be accomplished within the parameters of “annual trail maintenance.” While removing vegetation, downed trees blocking trails, or “danger trees” that have the potential to fall across trails, Public Works employees (and possibly volunteers) can “buck,” stack, or otherwise arrange what is cut and removed from a trail in such a way as to maximize new habitat for wildlife. Workers doing trail maintenance can also improve access, sightlines, and reduce fire hazards by removing debris, undergrowth, and downed limbs from areas of the Adams Tract that border on residential developments.¹⁰

⁹ Judson Edeburn, the Duke Forest Resource Manager, among others, reassured us that fire risk is quite low in our area of North Carolina.

¹⁰ The most logical solution would be to attempt to get teams of volunteers from the bordering residential areas – many of whom will be using the park - to help with this clearing in their area.

Costs

The cost of forest management in the Adams Tract depends on the level of volunteer support, but might add between \$2,000 - \$3,000 annually to the \$6,000 - \$7,000 already proposed for annual trail maintenance.

Forest Management	06-07 cost	07-08 cost	08-09 cost
Danger tree removal	\$870	\$870	\$870
Removal of invasive plant / shrub species	\$0	\$0	\$0
Habitat creation	\$0	\$0	\$0
Removal of undergrowth, debris, downed limbs in specific areas for fire protection.	\$1,300	\$1,300	\$1,300
Total	\$2,170	\$2,170	\$2,170
Total w. 5% annual inflation	\$2,2170	\$2,279	\$2,392

Appendix I – Management Plan Work Group¹¹

In addition to Anita Jones-McNair (Recreation and Parks Director), George Seiz (Public Works Director), Kokeita Miller (Rec. & Parks Facilities Administrator), and Drew Cummings (Asst. to the Town Manager), the Adams Tract Management Plan Work Group includes:

- Randeey Haven O'Donnell, Board of Aldermen (formerly Planning Board)
106 Fairfield Court
Chapel Hill, NC 27516
Rhaveno@da.org 967-9677(h)
- Diana McDuffee, former Alderman
2226 Pathway Drive
Chapel Hill, NC 27516
diana_mcduffee@unc.edu 929-3476(h) 966-0963(w)
- John Herrera, Board of Aldermen
101 Downing Court
Chapel Hill, NC 27516
johnh@self-help.org 933-4765(h) 956-4496(w)
- Doris Murrell, Recreation and Parks Commission
110 Williams Street
Carrboro, NC 27510
Dmurrell@email.unc.edu 968-6559(h) 966-8191(w)
- Marianne Nicholson, Recreation and Parks Commission
431 S. Greensboro Street
Carrboro, NC 27510
mamalama@bellsouth.net 967-5054(h) 942-6644(w)
- Stewart Bryan, Triangle Off-Road Cycling (TORC)
374 Walnut Branch Rd.
Chapel Hill, NC 27516
sponcon@mindspring.com 919-9001 (h) 619-1335 (c)
- Salli Benedict, Friend of Bolin Creek
302 Waterside Drive
Carrboro, NC 27510
Salli_benedict@unc.edu 929-8621(h) 966-6090(w)
- Stephen Peck, Orange County Recreation and Parks Advisory Council
100 Edgehill Place
Chapel Hill, NC 27516
speck18@nc.rr.com 967-7622 (h) 260-3127 (w)
(replaced Lori Taft, Orange County Recreation and Parks Director)
- Rich Shaw, Orange County Land Conservation Manager
Orange County ERCD
P.O. Box 8181
Hillsborough, NC 27278
rshaw@co.orange.nc.us 245-2591 (w) 812-4188 (c)

¹¹ The active membership of this group has changed somewhat over time.

Appendix II- Information About Possible Bridge Over Bolin Creek

The likeliest location for a Town-funded bridge across Bolin Creek would be just south of the intersection of Dry Gulch with Bolin Creek.¹² Permission from the landowner on the other side of the creek would need to be received before this bridge could be built. In order to build a bridge over Bolin Creek, the Town would first have to have its engineers conduct a Floodway Modification Study to model the effect of the kind of bridge required on the following:

1. base / 100 year flood elevation
2. floodway elevation
3. floodway width.

A study of this sort would cost roughly \$12,000, which would then be submitted to FEMA. The Town, because it is the administrator of a floodway policy that FEMA recognizes as being at least as stringent as its own, would then be required to contact the property owners of any property (no further upstream than the bridge at Airport Rd. and some distance downstream as well) where any of those levels would change to inform them that the Town is planning this bridge and this might cause one or more of those three things to change. If some of those people have negative reactions then the permit process takes longer, but only up to 90 days.

An alternative plan, which apparently is often taken in the case of greenway waterways, is that some other floodway modifications can be made (e.g. removing trees) to re-lower the flood height (in the model) in the same amount that the bridge would raise it. An engineering company doing the Floodway Modification Study could tell us the kinds of things that might achieve this result.

Bridge Costs

Bridges of this type cost anywhere from \$30 - \$100 / s.f. If, as estimated, the bridge is roughly 50ft. long and 10ft. wide, we would have a 500 s.f. bridge. At a medium-low level price of \$45/s.f. that's \$22,500. Including the cost of the Floodplain Modification Study (\$12,000), the total for the larger bridge would be \$34,500 – a cost level which indicates that this item would have to go through the CIP process prior to construction.

Sources: Henry Wells, Sungate, Town Engineer ; Phil Letsinger, NC Branch Mgr. for FEMA Floodplain Mgmt. Div., (919) 715-8000 x273, who also mentioned that I could talk to Ed Curtis, engineer in same division (x369), or John Gerber, mapper and engineer, at (919) 715-5711 x106.

¹² With a bank-to-bank span of roughly 25 – 30ft. at that location, the bridge would likely be somewhere in the neighborhood of 50ft. long. A standard width is 10ft.

Appendix III- Invasive Species Mgmt. in the Adam's Tract

Existence of Invasive Species in the Adams Tract

There are two main invasive species becoming more and more obvious in the Adams Tract. These two large shrubs - autumn olive and Chinese privet – can grow to between 20 – 30 ft. in height and (especially Chinese privet) spread aggressively, taking over areas where other species used to be prevalent. It is not known how long these species have been present in the Adams Tract or just how aggressively they may be spreading.

Options for Removal

There are several options for removal if the Town decides to take this route. Town staff have assessed these options with due consideration for the Town's adopted *Integrated Pest Management Policy*, which clearly mandates "least toxic" methods but also recognizes that "there may occasionally be circumstances in which conventional pesticides may be required."¹³ Town staff have also consulted with representatives of Duke Forest as well as the North Carolina Botanical Garden regarding approaches to dealing with the invasive species in the Adams Tract. The Wilson Park Urban Forestry Plan completed by the North Carolina Forestry Service (see Appendix VII) also addresses the question of invasive species to some degree.

Because these species exist outside the Adams Tract and are easily spread by birds and other means, they are very unlikely to ever be permanently eradicated no matter which methods are used. Thus, any effort to remove them or minimize their effects on the Adams Tract ecosystem would have to be continuous and satisfied by partial success.

Some methods of removing invasives of the type in the Adams Tract involve herbicides and others – often referred to as "manual removal" – do not. Manual removal would either entail cutting the invasives off near the ground or digging both the plants and root systems entirely out of the ground. Cutting is much less labor intensive, but the plants grow back quickly and often thicker than before. The plants can also reproduce from root fragments, so in addition to being much, much more labor intensive, the digging method may not actually kill a particular plant.

Herbicide is a widely recommended method for removing invasives such as the two concerned here. The North Carolina Botanical Garden, the North Carolina Forestry Service (in their "Wilson Park Urban Forestry Plan"), and a contractor contacted about dealing with these invasives *all* recommended the use of herbicide.¹⁴ The herbicide that would be used contains the active ingredient *glyphosate* and could be sprayed on the leaves, the bark, or painted onto stumps after cutting. According to the EPA, *glyphosate* becomes inert in soil and poses negligible danger to terrestrial animals, aquatic animals, microorganisms, and groundwater.¹⁵ This method would employ a combination of cutting, painting stumps with herbicide, and then foliar spraying to eliminate any small plants coming up from the "five year seedbed" in the four years after the first, comprehensive removal of existing plants.

¹³ <http://www.townofcarrboro.org/PW/ipm.htm>

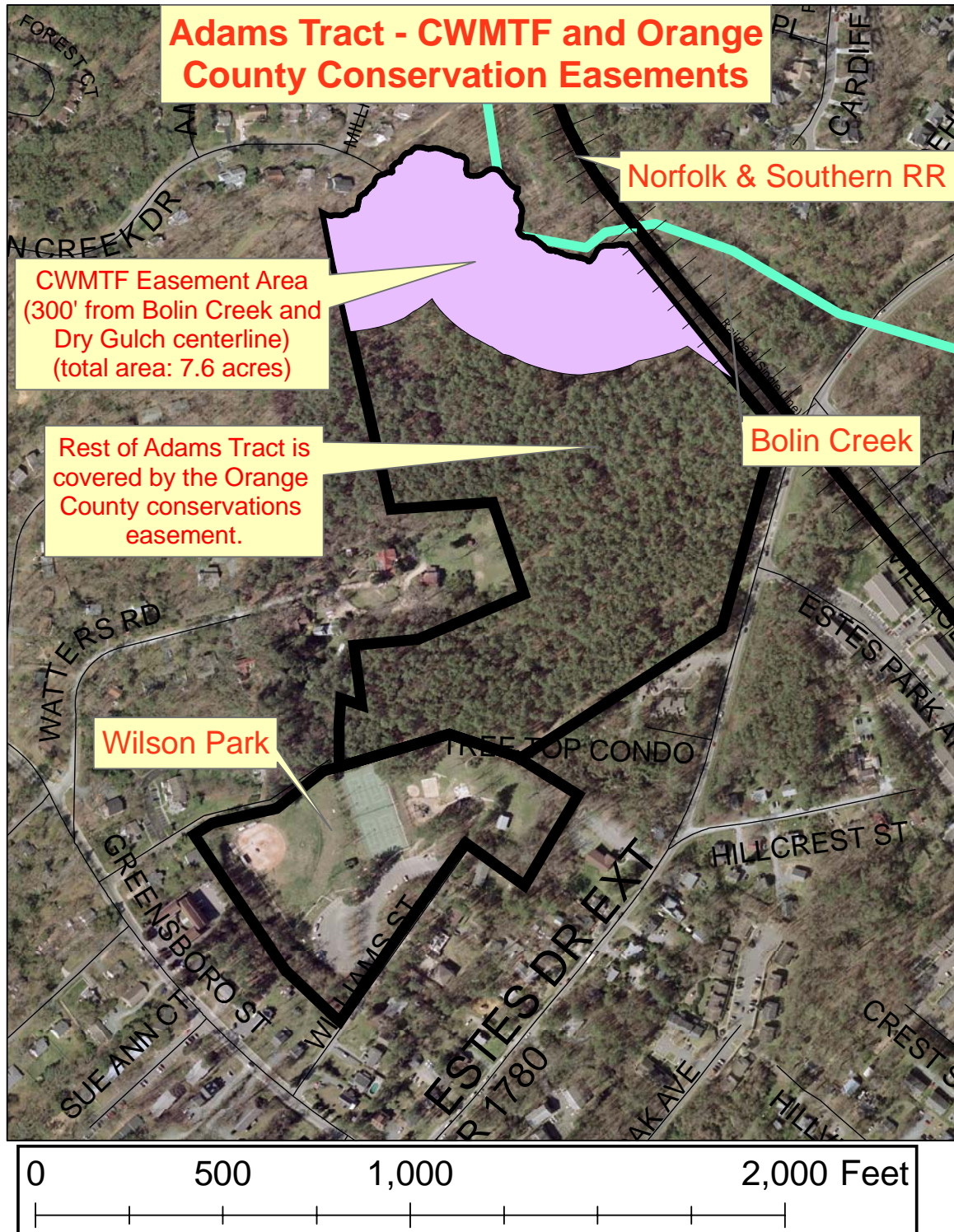
¹⁴ Depending on the methods used, Town staff might be able to handle the application of herbicides in-house.

¹⁵ http://www.epa.gov/safewater/contaminants/dw_contamfs/glyphosa.html

Cost for Removal

The Town could do as little or as much manual removal and/or herbicide application as it wanted, and the costs of this activity would vary accordingly. Digging plants and root systems out is really the only manual method that is effective in the medium and long run. The labor costs for this method, however, are significantly higher than methods employing some herbicide use. As for the herbicide-based methods described above, an initial quote from a contractor indicates that this combination method would cost the town \$30,000 in the first year and \$5,000 - \$7,000 for four more years.

Appendix IV – Map Showing CWMTF and Orange County Conservation Easements



Appendix V – N.C. Clean Water Mgmt. Trust Fund Conservation Easement¹

N.B. A summary of the 7.6 acre “Riparian Buffer Easement Area” is followed by the actual text of the grant contract and deed of easement.

“It is the Grantor’s intent and purpose to create and restrict that part of the property within three hundred feet of Bolin Creek², in order to preserve, enhance, restore, and maintain the natural features and resources of this Easement Area, to provide habitat for native plants and animals, to improve, maintain and protect water quality, and to control runoff of sediment.”³

Allowable Uses

1. Passive recreational uses (defined in Exhibit B as “walking, jogging, and fishing”).
2. That easement area shall be open for public entry and public use by all persons.
3. Trails must be a minimum of 15’ from the top of Bolin Creek. Trails must comply with Carrboro LUO, CWMTF, and ADA regulations. Where required by terrain, boardwalks, ramps, handrails, and steps are permitted.
4. Park benches, litter receptacles, and trail/feature/informational signs.
5. An observation / viewing platform, provided it is fifty or more feet from Bolin Creek.
6. A 5-10’ wide bridge over Bolin Creek that is AASHTO and ADA compliant.
7. Any activities designed to encourage greater wildlife (plant and animal) diversity.
8. Stream restoration (with prior approval).

Required Actions

1. To develop a formal, long-term management plan for the protection of water quality in Bolin Creek, preservation of natural areas, and the preservation of open space for recreational activities.
2. To post signs along the boundaries of the property that acknowledge the participation of the Clean Water Management Trust Fund in the purchase and protection of the property.
3. To the extent possible, to appropriately publicize the project’s (and hence the grant’s) water quality benefits to the general public, local government and state representatives.

Prohibited Uses

1. “Grantor shall not allow use of the greenway trails or any portion of the Easement Area for biking or by all-terrain vehicles.”

No buildings ; no commercial or industrial uses ; no agricultural, timber harvesting, grazing, or horticultural uses ; no tree-cutting except as incidental to other allowable work ; no mining or excavation; no subdivision.

¹ Excerpted from the grant contract as well as the easement text.

² (It is actually 300’ in from Bolin Creek only where Bolin Creek is the border of the Adams Tract. Where Bolin Creek departs on the northern end of the Adams Tract, the 300 ft. is measured in from Dry Gulch (see map)

³ From Section B of the easement.

CLEAN WATER MANAGEMENT TRUST FUND
GRANT AGREEMENT
(PROPERTY ACQUISITION)

GRANT RECIPIENT: TOWN OF CARRBORO

DENR CONTRACT NO.:

CWMTF PROJECT NO.: 2002A-003

FEDERAL I.D. NO. 56-6001194

PROJECT DESCRIPTION: The Town of Carrboro requested a revised amount of \$208,050 of a \$958,050 effort to protect 28 acres along Bolin Creek in fee simple and to place the property under a permanent conservation easement. The property is located in Orange County in the Cape Fear River Basin. The Board of Trustees approved a reduced grant amount of up to \$202,000 for acquisition of only the 6-acres of riparian area, transactional costs and a Phase 1 Environmental Site Assessment, at its meeting on December 10, 2002.

THIS GRANT AGREEMENT (the "Grant Agreement"), is made effective as of the 12th day of MAY, 2003, by and between THE NORTH CAROLINA CLEAN WATER MANAGEMENT TRUST FUND, acting through its Board of Trustees solely in its official capacity pursuant to Article 13A of Chapter 113 of the General Statutes of North Carolina (the "Fund") and THE TOWN OF CARRBORO with an address of 301 West Main Street, Carrboro, NC 27510 (the "Grant Recipient").

RECITALS

A. The Grant Recipient will use the funds described in Section I hereof for the purchase of the property described in Exhibit A attached hereto (the "Property"), for the purposes and according to the schedule set out in Exhibit A.

B. The Fund tentatively approved the Grant Recipient's application at its meeting on December 10, 2002 and is willing to make the grant described hereinabove based on the terms and conditions set forth in this Grant Agreement.

COVENANTS

NOW, THEREFORE, in consideration of the mutual agreements set forth herein together with other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the Grant Recipient and the Fund enter into this Grant Agreement in accordance with Article 13A of Chapter 113 of the General Statutes of North Carolina (N.C.G.S. § 113-145.1, et seq.).

SECTION I
The Grant

1.1. Grant. Subject to the availability of funds and subject to the terms and conditions of this Grant Agreement, the Fund will grant the Grant Recipient the sum of **up to two hundred and two thousand dollars (\$202,000)** (the "**Grant**"), as described on Exhibit A attached hereto, for the purchase of the Property pursuant to the terms hereof.

1.2. Grant Purpose. The purpose of the Grant is for Property acquisition and conservation. The Grant funds will be disbursed according to the provisions of Section IV after the conditions set out in Sections II and III have been satisfied or waived in writing by the Fund, and subject to all other provisions of this Grant Agreement.

1.3. Other Uses Prohibited. Grant funds may not be used for any purpose other than those described in paragraph 1.2.

1.4. Grant Disbursement Period. The Fund's commitment to disburse Grant funds under this Grant Agreement shall cease on **May 31, 2005**.

1.5. Grant Expiration. It is the responsibility of the Grant Recipient to ensure that the project is completed by the expiration date of the contract defined in paragraph 1.4. Once the contract has expired, any funds remaining in the contract will no longer be available to the Grant Recipient. Should the Grant Recipient anticipate that the project will not be complete by the expiration date, it is the responsibility of the Grant Recipient to request an extension of the contract, by letter, detailing why an extension is needed, formally requesting the extension, and proposing a new expiration date for the contract. This letter of request must reach the Fund office at least **60 days** prior to the contract expiration date. The Fund may or may not grant the extension, based upon project performance and other factors. The Fund will not notify the Grant Recipient that the contract expiration date is approaching, and it is therefore critical that the Grant Recipient remain aware of the expiration date and follow the above procedure for contract extension, if needed.

SECTION II
Conditions Precedent for Disbursement of Any Grant Funds

Before any Grant funds are disbursed for the acquisition of the Property (the "**Property Acquisition**"), the Grant Recipient shall deliver to the Fund the following items:

2.1. Authorization Documents. As a local government or other political subdivision of the State of North Carolina, or a combination of such entities, it or they shall provide the Fund authorization from the governing board or other appropriate authority to perform the functions and obligations of Grant Recipient set out in this Grant Agreement.

2.2. Matching Funds. Proof of availability of matching funds, if required by the Grant approval.

2.3. Compliance with Laws. Evidence satisfactory to the Fund that the Property and its intended uses are, and will continue to be, in compliance with all applicable laws, regulations and ordinances, including without limitation, land use, health and environmental protection laws and zoning laws.

2.4. Compliance with Prior Grant Awards Requirements. Evidence satisfactory to the Fund that the Grant Recipient properly completed and filed all documents, reports and requests associated with any prior Fund awards.

SECTION III
Conditions Precedent for Property Acquisition

Grant funds for the Property Acquisition may be disbursed at Closing for the purchase, or may be reimbursed subsequent to Closing. In either case, the Fund shall disburse Grant funds for the Property Acquisition only after all of the following items have been delivered to and approved by the Fund as satisfactory in form and substance and, where appropriate, have been properly executed and/or recorded at Closing of the Property Acquisition. For grant funds to be disbursed at Closing, these items must reach the Fund office at least **For grant funds to be disbursed at Closing, Items 3.8, 3.9, and 3.10 must reach the Fund office at least 45 days prior to closing and all of the remaining items listed below must reach the Fund office at least 30 days prior to Closing.**

3.1. Purchase Agreement or Option. Copy of the purchase agreement or option to Grant Recipient which sets forth the terms of the Property Acquisition.

3.2. Proposed Deed. Proposed General Warranty Deed (the “**Deed**”) or other instrument of conveyance, which indicates Grant Recipient’s ownership and possession of fee simple title, free and clear of any liens, charges or encumbrances that would materially affect the use of the Property as set forth in the Conservation Easement. The general warranty deed shall include such restrictions as the Fund shall deem necessary to effectuate the recordation and effectuation of the Conservation Easement.

3.3. Proposed Declaration of Covenants and Restrictions. A proposed Declaration of Covenants and Restrictions (“**Covenants**”) showing the State of North Carolina (“**State**”) as grantee and in form satisfactory to the Fund.

3.4. Proposed Conservation Easement. A proposed Conservation Easement (“**Conservation Easement**”) showing the State as grantee and in form satisfactory to the Fund.

3.5. Zoning and Regulatory Compliance. Evidence that the Property is or will be zoned to allow the uses described on Exhibit A attached hereto, and that other required regulatory approvals have or will be obtained, and there are no hazardous materials, wastes, or other environmentally regulated substances in, on or under the Property and no environmental condition

that may prohibit or impede the Grant Recipient's intended use of the Property as described on Exhibit A attached hereto. The closing and/or title attorney shall provide this documentation to the Grant Recipient.

3.6. Title Insurance Binder. A standard ALTA title insurance binder, with a policy to be delivered after closing, for the Property from a company approved by the Fund without exception as to matters of survey: (a) providing coverage for the full principal amount of the Grant used to purchase the Property; (b) listing only those title exceptions acceptable to the Fund; and (c) including insurance of all appurtenant easements, if any. The closing and/or title attorney shall provide this documentation to the Grant Recipient.

3.7. Title Exceptions. Copies of all recorded documents creating exceptions to the Title Policy. The closing and/or title attorney shall provide this documentation to the Grant Recipient.

3.8. Survey. Three (3) copies of a complete and accurate survey of the Property made within 90 days prior to the closing of the Property Acquisition. Two full-sized surveys, and one 8 ½ by 11 inch survey shall be provided. The survey shall depict a metes and bounds description. The survey shall be in accordance with the latest version of NCAC Title 21 Chapter 56.1600 – Standards for Practice of Land Surveying in North Carolina; in particular Paragraph 21-56.1602(g). The survey shall depict the Property Identification Number (PIN). The survey shall specify the length of any property boundaries shared with surface waters.

3.9. Appraisal. Appraisal(s) of the value of the Property to be purchased, satisfactory to the Fund, performed by an independent certified appraiser acceptable to the Fund and consistent with regulations or policies of the State Property Office and policies of the Fund which reflects that the Grant Recipient did not pay in excess of a current fair market value of the Property. Two appraisals are required if the value of the Property to be purchased is greater than or equal to \$250,000. All appraisals are subject to review by the State Property Office. At the discretion of the Fund, the Grant Recipient may be required to amend or update the appraisals.

3.10. Environmental Report. A Phase 1 Environmental Site Assessment report regarding the environmental condition of the Property, satisfactory to the Fund. The Phase 1 Environmental Site Assessment shall conform to the requirements of the latest version of ASTM Standard E-1527. Matters of concern identified in the report shall be addressed by the Grant Recipient in a letter to the Fund, stating Grant Recipient's method of and schedule for remedy for each matter of concern. The Fund reserves the right to require the Grant Recipient to remedy any concerns prior to or subsequent to Closing.

3.11. Taxes. Evidence that the *ad valorem* taxes have been paid through the year prior to the year in which the Property Acquisition is to take place under this Grant Agreement, and information as to tax parcel identification numbers, tax rates, estimated tax values and the identities of the taxing authorities.

3.12. Seller's Affidavit. An affidavit signed and acknowledged by the Seller, that to the best of its knowledge after appropriate inquiry and investigation: (a) the Property described herein is in full compliance with all federal, state and local environmental laws and regulations, and (b) as

of the date hereof there are no hazardous materials, substances, wastes or other environmentally regulated substances, including, without limitation, any materials containing asbestos, located on, in or under the Property or used in connection therewith, and that there is no environmental condition existing on the Property that may prohibit or impede use of the Property for the purposes set forth in this Grant Agreement. Said affidavit shall be made to Grant Recipient, Fund and the State; and (c) neither the Property, nor any portion thereof, is or shall be used to satisfy mitigation requirements under 33 U.S.C. §1344 or N.C.G.S. 143-214.11.

SECTION IV
Disbursement of Property Acquisition Funds

4.1. Timing. Disbursement of Grant funds shall be made at the closing of the Property Acquisition (the “Closing”) or as a reimbursement to Grant Recipient subsequent to Closing. For grant funds to be disbursed at Closing, the items specified in Section III must reach the Fund office at least 30 or 45 days prior to Closing as specified in Section III.

4.2. Closing Attorney. Prior to each Closing, the Grant Recipient shall provide the Fund the name, address, and telephone number of the closing attorney and the time and location of the Closing.

4.3. Deed. The original previously approved General Warranty Deed executed in recordable form shall be delivered by the Grant Recipient to the closing attorney and recorded at Closing. A copy of the recorded Deed showing recording information shall be delivered to the Fund subsequent to Closing.

4.4. Declaration of Covenants and Restrictions. The original previously approved Covenants executed in recordable form shall be delivered by the Grant Recipient to the closing attorney and recorded at Closing. A copy of the recorded Covenants showing recording information shall be delivered to the Fund subsequent to Closing.

4.5. Conservation Easement. The previously approved Conservation Easement shall be delivered by the Grant Recipient to the closing attorney for proper execution at Closing. The original executed Conservation Easement, in recordable form, shall be delivered to the Fund subsequent to Closing. Upon approval and acceptance by the Council of State, it shall be forwarded by the State to the appropriate Register of Deeds authority for recordation. The Register of Deeds shall return the Conservation Easement to the State Property Office for safekeeping.

4.6. Closing Documentation. Subsequent to each Closing, the Grant Recipient shall, **within 30 days of the Closing**, provide to the Fund copies of the recorded Deed, recorded Covenants, Final Title Insurance Policy, signed Closing Statement and all other documents and materials that the closing attorney prepared or received at Closing. The original executed Conservation Easement in recordable form shall be delivered with the aforesaid documents to the Fund along with applicable recording fees payable to the appropriate Register of Deeds.

4.7. Audits. Grant Recipient agrees that the Fund and the State have the right to audit the books and records of the Grant Recipient pertaining to this Grant Agreement both prior to the Closing and for thirty-six (36) months after Closing or the completion or termination of this Grant Agreement. The Grant Recipient shall retain complete accounting records, including original invoices, payrolls, contracts, or other documents clearly showing the nature of all costs incurred under this Grant Agreement, for that same period of time.

4.8. No Excess Costs. The Fund agrees to reimburse the Grant Recipient only for reasonable costs actually incurred by the Grant Recipient which do not exceed the funds budgeted for the Property Acquisition in Exhibit A and B.

SECTION V

Reporting Requirements and Disbursement of Other Project Costs

5.1. Status Reports. Grant Recipient shall submit a written detailed narrative progress report describing the work accomplished on the Project and progress toward meeting the Project objectives to the Deputy Director of the Fund ("**Deputy Director**") every 3 months.

5.2. Disbursement of Other Project Costs. If this Grant Agreement includes grant funds for project costs other than the Property Acquisition, as shown in Exhibit A and B, the Grant Recipient shall be reimbursed for those costs as follows. Requests for reimbursement for surveys, appraisals, environmental reports, or other expenses shall include:

- (a) A copy of the document for which reimbursement is requested.
- (b) A copy of invoices or other documentation submitted to the Grant Recipient showing the itemized expenses incurred related to the document for which reimbursement is requested. Grant Recipient shall identify any sales tax for which reimbursement has been or will be obtained from the State Department of Revenue, and such monies shall not be reimbursed.
- (c) A written detailed narrative progress report as described above.
- (d) A signed cover letter requesting reimbursement and stating that the Grant Recipient complied with all terms of this Agreement in incurring these expenses.

5.3. Final Report. The Grant Recipient shall submit a final report within **30 days** of the Closing of the Property Acquisition. Such final report shall include:

- (a) Documents, reports or other evidence, including photographs necessary, if any, to verify that the Property Acquisition has been concluded in compliance with this Grant Agreement.
- (b) A full financial report on the Property Acquisition.
- (c) A copy of the Grant Recipient's financial and compliance audits.

SECTION VI
Affirmative Covenants

6.1. Dedication of Property. If required by the Fund, Grant Recipient agrees to promptly pursue dedication of the Property as a North Carolina nature preserve if those lands are declared eligible by the State's Secretary of the Department of Environment and Natural Resources pursuant to the N.C.G.S. Chapter 113A, Article 9A (the "Nature Preserves Act").

6.2. Conservation Easement. Grant Recipient shall grant a Conservation Easement over the Property to the State or, at the Fund's discretion, a third party that would otherwise be eligible to receive grant money from the Fund. The Conservation Easement shall convey such rights and establish such restrictions on use as may be deemed by the Fund, and the State, or any third party designee necessary to accomplish the purposes set out in Exhibit A and indemnities satisfactory to the Fund; therefore Grant Recipient covenants that it will manage the Property pursuant to the restrictions of use contained in the Conservation Easement and to be bound by the terms thereof during the time prior to recordation.

6.3. No Mitigation. Grant Recipient shall not use the Property or any portion thereof to satisfy compensation mitigation requirements under 33 U.S.C. § 1344 or N.C.G.S. 143-214.11.

6.4. Right of Entry and Inspections. The Grant Recipient shall permit representatives of the Fund to visit the Property and any other premises of the Grant Recipient to examine any property purchased with the Grant funds and to review the activities of the Grant Recipient pursuant to the Grant, including books and records in any way related to the Grant or the Property.

6.5. Retention, Operation, Maintenance and Use.

(a) Grant Recipient agrees to carry out acquisition of the Property as approved by the Fund. The Property descriptions, purpose, schedules, scope of work and budgets set out in Exhibit A and B, and accompanying or related plans, specifications, estimates, procedures and maps submitted to the Fund by the Grant Recipient are the foundation of this Grant Agreement. Only changes deemed non-material in type at the discretion of the Executive Director of the Fund may be made without the consent of the Fund Board of Trustees.

(b) Property acquired, developed or improved with grant assistance from the Fund shall be used for the purposes identified in the Conservation Easement and Grant Recipient hereby agrees to file or record such restrictions as may be required to assure such continued use.

(c) The Grant Recipient shall not sell or transfer the Property or any interest therein, and shall not incur, assume, or suffer to exist any lien upon or with respect to the Property without disclosing to the prospective buyer the Conservation Easement and the obligations of Grant Recipient and limitations on use of the Property.

(d) Property acquired, developed or improved for public use with grant assistance that is open for entry and use by the public shall be open to entry and use equally by all

persons, regardless of race, color, creed, national origin, or residence, subject to reasonable published rules governing use of the Property consistent with this Grant Agreement.

6.7. Signage. Grant Recipient agrees, at its cost, to post visible signs along boundaries of the Property, satisfactory to the Fund, that acknowledge participation of the Fund in the purchase and protection of the Property and that the Property will remain in its protected state.

6.8. Publicity. To the extent possible, the Grant Recipient will use its best efforts to appropriately publicize the project's water quality benefits to the general public, local government and state representatives, including the role of the Fund in the funding and development of the project.

6.9. Conflicts of Interest. If Grant Recipient is a nonprofit corporation, it shall at all times comply with its conflict of interest policy. If Grant Recipient is an agency of the State of North Carolina or a local government or other political subdivision of the State, or a combination of such entities as described in Section 2.1 hereof, it shall comply with all conflicts of interest laws, rules and regulations applicable to it in the State.

6.10. Additional Requirements. Grant Recipient shall comply with all legal requirements applicable to the use of the Grant funds.

SECTION VII Representations and Warranties

In order to induce the Fund to enter into this Grant Agreement and to make the Grant as herein provided, the Grant Recipient, after reasonable inquiry, makes the following representations, warranties and covenants, which shall remain in effect after the execution and delivery of this Grant Agreement and any other documents required hereunder, any inspection or examinations at any time made by or on behalf of the Fund, and the purchase of the Property by the Grant Recipient:

7.1. No Actions. There are no actions, suits, or proceedings pending, or to the knowledge of the Grant Recipient threatened, against or affecting the Grant Recipient before any court, arbitrator, or governmental or administrative body or agency which might affect the Grant Recipient's ability to observe and perform its obligations under this Grant Agreement.

7.2. Validity of Grant Documents. Upon execution and delivery of items required hereunder, this Grant Agreement and the other grant documents and items required hereunder will be valid and binding agreements, enforceable in accordance with the terms thereof.

7.3. No Untrue Statements. Neither this Grant Agreement nor any information, certificate, statement, or other document furnished by Grant Recipient in connection with the Grant, contains any untrue statement of a material fact or omits disclosure of a material fact which affects the Property, the Conservation Easement or the ability of the Grant Recipient to perform this Grant Agreement.

7.4. Zoning. The present and proposed use of the Property, including, without limitation, the purpose of the Conservation Easement, is in compliance with all zoning ordinances, and all municipal and other governmental and regulatory approvals have been or will be obtained for the use and for operation of the Property according to this Grant Agreement.

7.5. Environmental Condition of Property. The Grant Recipient warrants, represents and covenants to the Fund that to the best of its knowledge after appropriate inquiry and investigation: (a) the Property is and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, and (b) as of the date hereof there are no hazardous materials, substances, wastes or other environmentally regulated substances (including, without limitation, any materials containing asbestos) located on, in or under the Property or used in connection therewith, and that there is no environmental condition existing on the Property that may prohibit or impede use of the Property for the purposes set forth in this Grant Agreement, and the Grant Recipient will not allow such uses or conditions.

7.6. Access. There is legal public access to the Property from a public roadway.

SECTION VIII Events of Default

The happening of any of the following, after the expiration of any applicable cure period without the cure thereof, shall constitute an event of default ("**Event(s) of Default**") by the Grant Recipient of its obligations to the Fund and shall entitle the Fund to exercise all rights and remedies under this Grant Agreement and as otherwise available at law or equity:

8.1. Property Unsuitable. A determination by the Fund, prior to the Closing of the Property Acquisition, that the Property is unsuitable for the purpose(s) for which this Grant Agreement is made.

8.2. Unsuitable Use. The Property is used in a manner materially inconsistent with the purposes of this Grant Agreement or the Conservation Easement.

8.3. Default in Performance. The default by the Grant Recipient in the observance or performance of any of the terms, conditions or covenants of this Grant Agreement, including, without limitation, a failure to satisfy any condition precedent to disbursement or reimbursement set forth in Sections II, III, or IV herein; provided, however, that no such default shall occur until the Grant Recipient has been given written notice of the default and thirty (30) days to cure have elapsed,

8.4. Misrepresentation. If any representation or warranty made by the Grant Recipient in connection with the Grant or any information, certificate, statement or report heretofore or hereafter made shall be untrue or misleading in any material respect at the time made.

8.5. Eligibility of Grant Recipient. If Grant Recipient ceases to be qualified to receive Grant funds or is dissolved or otherwise ceases to exist.

SECTION IX
The Fund's Rights and Remedies

If an Event of Default shall occur, the Fund shall have the following rights and remedies, all of which are exercisable at the Fund's sole discretion, and are cumulative, concurrent and independent rights:

9.1. Default Prior to Closing. If any Event of Default occurs prior to Closing, the Fund may, at its discretion, suspend and/or terminate all obligations of the Fund hereunder and Grant Recipient shall immediately refund all money previously paid to the Grant Recipient under this Grant Agreement. If in the judgment of the Fund, such failure was due to no fault of the Grant Recipient, amounts required to resolve at minimum costs any irrevocable obligations properly incurred by Grant Recipient shall, in the discretion of the Fund, be eligible for reimbursement under this Grant Agreement.

9.2. Default Subsequent to Closing. (a) If an Event of Default occurs subsequent to Closing, and 1) the Fund or State have received the Conservation Easement over the Property at Closing and 2) the Property has not been dedicated pursuant to Section 6.1 hereof, the Fund may, at its discretion elect either of the following remedies:

(i) Suspend and/or terminate all obligations of the Fund hereunder and the Grant Recipient shall immediately refund to the Fund all money previously paid to the Grant Recipient under this Grant Agreement, in which case the Fund shall return to the Grant Recipient the executed original Conservation Easement if it has not been accepted by the State, or, if it has been accepted, shall have the State release, remise and quitclaim to the Grant Recipient any of the State's right title and interest in the Conservation Easement and the Property, or

(ii) Seek to obtain title to preserve or protect its interest in the Property, in which case the Fund or State shall be entitled to maintain and enforce its rights under the Conservation Easement and to obtain title to the Property, in which case the Fund shall have no right to receive any reimbursement, refund or repayment of any money paid Grant Recipient under this Grant Agreement.

(b) If an Event of Default occurs subsequent to Closing, and 1) a third party has received the Conservation Easement, and/or 2) the Property has been dedicated pursuant to Section 6.1 hereof, the Fund and State may seek to obtain title to preserve or protect its interest in the Property, and the Grant Recipient shall convey and transfer to the Fund, the State or designee by general warranty deed, free and clear of any liens, charges or encumbrances that would materially affect the use of the Property as set forth in the Conservation Easement, all its underlying fee simple title to the Property, in which case the Fund shall have no right to receive any reimbursement, refund, or repayment of any money paid Grant Recipient under this Grant Agreement.

9.3. Nonwaiver. No delay, forbearance, waiver, or omission of the Fund to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right,

power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to the Fund may be exercised from time to time and as often as may be deemed expedient by the Fund.

SECTION X
Miscellaneous

The following conditions shall be applicable to this Grant Agreement:

10.1. Modification. This Grant Agreement may be rescinded, modified or amended only by written agreement executed by all parties hereto.

10.2. Benefit. This Grant Agreement is made and entered into for the sole protection and benefit of the Fund, the State and the Grant Recipient, and their respective successors and assigns, subject always to the provisions of Section 10.7 hereof. Except for the State, there shall be no third party beneficiaries to this Grant Agreement.

10.3. Further Assurance. In connection with and after the disbursement of Grant funds under this Grant Agreement, upon the reasonable request of the Fund, the Grant Recipient shall execute, acknowledge and deliver or cause to be delivered all such further documents and assurances, and comply with any other requests as may be reasonably required by the Fund or otherwise appropriate to carry out and effectuate the grant contemplated by this Grant Agreement and the purposes of the Conservation Easement.

10.4. Compliance by Others. The Grant Recipient shall be responsible for compliance with the terms of this Grant Agreement by any political subdivision or public agency to which funds are transferred pursuant to this Grant Agreement. Failure by such organization to comply shall be deemed failure by the Grant Recipient to comply with the terms of this Grant Agreement.

10.5. No Discrimination. The Grant Recipient shall assure that no person will be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity covered by this Grant Agreement solely on the grounds, race, color, age, religion, sex or national origin.

10.6. ADA Compliance. The Americans with Disabilities Act 1990 as it may be amended from time to time, and the rules and regulations promulgated in connection therewith (the "ADA") makes it unlawful to discriminate in employment against a qualified individual with a disability and outlaws discrimination against individuals with disabilities in State and local government services and public accommodations. The Grant Recipient agrees to make reasonable efforts to comply with, and agrees to make reasonable efforts to cause its principals and subcontractors to comply with, the ADA as it relates to its employment practices.

10.7. Assignment. The terms hereof shall be binding upon and inure to the benefit of the successors, assigns, and personal representatives of the parties hereto; provided, however, that the

Grant Recipient may not assign this Grant Agreement or any of its rights, interests, duties or obligations hereunder or any Grant proceeds or other moneys to be advanced hereunder in whole or in part without the prior written consent of the Fund, which may be withheld for any reason and that any such assignment (whether voluntary or by operation of law) without said consent shall be void.

10.8. No Partnership, Joint Venture, or Agency. This Grant Agreement shall not in any way be interpreted or construed as making the Fund a partner or joint venturer with the Grant Recipient, nor as making the Grant Recipient agent or representative of the Fund. The Grant Recipient agrees that neither it nor its agents or employees are or shall be agents or employees of the Fund. In no event shall the Fund be liable for debts or claims accruing or arising against the Grant Recipient.

10.9. Indemnity. The Grant Recipient agrees, to the fullest extent permitted by law, to release, defend, protect, indemnify and hold harmless the State, the Fund, its Trustees, employees and agents against claims, losses, liabilities, damages, and costs, including reasonable attorney fees, which result from or arise out of: (A) damages or injuries to persons or property caused by the negligent acts or omissions of Grant Recipient, its employees, or agents in use or management of the Property; or (B) use or presence of any hazardous substance, waste or other regulated material in, under or on the Property. The obligations under this Section are independent of all other rights or obligations set forth herein. This indemnity shall survive the disbursement of the Grant funds, as well as any termination of this Grant Agreement.

10.10. Governing Law, Construction and Jurisdiction. This Grant Agreement and the other Grant Documents and all matters relating thereto shall be governed by and construed and interpreted in accordance with the laws of the State of North Carolina, notwithstanding the principles of conflicts of law. The headings and section numbers contained herein are for reference purposes only. The terms of this Grant Agreement shall be construed according to their plain meaning, and not strictly construed for or against either party hereto. The Grant Recipient hereby submits to the jurisdiction of the state and Federal courts located in North Carolina and agree that the Fund may, at its option, enforce its rights under the Grant Documents in such courts. The parties hereto intend this document to be an instrument executed under seal. The Fund and any party that is an individual, partnership or limited liability company hereby adopts the word "SEAL" following his/her signature and the name of the Fund or partnership or limited liability company as his/her/its legal seal.

10.11. Savings Clause. Invalidation of any one or more of the provisions of this Grant Agreement, or portion thereof, shall in no way affect any of the other provisions hereof and portions thereof which shall remain in full force and effect.

10.12. Notices. All notices, requests or other communications permitted or required to be made under this Grant Agreement or the other documents contemplated by this Grant Agreement shall be in writing, signed by the party giving such notice to the address set forth below, and shall be deemed given three (3) business days next following the date when deposited in the mail, postage prepaid, registered or certified mail, return receipt requested, to the other party hereto at the

address indicated below or such other addresses as such party may establish in writing to the other party in the manner provided hereunder for notices:

If to the Fund: Clean Water Management Trust Fund
1651 Mail Service Center
Raleigh, NC 27699-1651
Attn: Francine Durso, PE, Deputy Director
(francine@cwmtf.net; 919.716.0055)

If to the Grant Recipient: Town of Carrboro
Town Manager's Office
301 West Main Street
Carrboro, NC 27510
Attn: Richard White, Assistant to the Town Manager
(rwhite@townofcarrboro.org; 919.918.7314)

10.13. Additional Remedies. Except as otherwise specifically set forth herein, the rights and remedies provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Grant Agreement.

10.14. Survivorship. Where any representations, warranties, covenants, indemnities or other provisions contained in this Grant Agreement by its context or otherwise, evidences the intent of the parties that such provisions should survive the Closing or termination of this Grant Agreement, the provisions shall survive the Closing or any termination. Without limiting the generality of the foregoing, the parties specifically acknowledge and agree that the provisions of Sections VI, VII, VIII, IX and X shall survive the Closing, as well as any termination of this Grant Agreement.

10.15. Entire Agreement. This Grant Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof. All recitals, exhibits, schedules and other attachments hereto are incorporated herein by reference.

[Signatures contained on next page]

IN WITNESS WHEREOF, the undersigned have executed this Grant Agreement under seal through their duly authorized officers or representatives, to be effective the day and year first above written.

ATTEST:

GRANT RECIPIENT:

By: Sarah C. Williamson

By: Michael R. Nelson

Name Typed: Sarah Williamson

Name typed: Michael Nelson

Title: Town Clerk

Title: Mayor



FUND:

NORTH CAROLINA CLEAN WATER
MANAGEMENT TRUST FUND BOARD OF
TRUSTEES (SEAL)

By: Robert D. Howard
Robert D. Howard, Chairman

EXHIBIT A
CWMTF No. 2002A-003

The Town of Carrboro requested a revised amount of \$208,050 of a \$958,050 effort to protect 28 acres along Bolin Creek in fee simple and to place the property under a permanent conservation easement. The property is located in Orange County in the Cape Fear River Basin. The Board of Trustees approved a reduced grant amount of up to \$202,000 for acquisition of only the 6-acres of riparian area, transactional costs and a Phase 1 Environmental Site Assessment, at its meeting on December 10, 2002.

Water Quality Benefits:

1. Establishes 6 acres of riparian buffer along 500 linear feet of Bolin Creek (C, NSW, 303(d) list year 2000).
2. Acquisition protects the water quality of a relatively unpolluted segment of the creek.
3. Maintains vegetative cover that serves to filter ambient air deposition as well as surface water contaminants, and maintains the current regime of subsurface water flow.

Scope of Work:

1. Acquire 6 acres of riparian buffers in fee simple and place under a permanent conservation easement with the State of North Carolina.
2. Acquire remaining 22 acres of uplands of the tract and place under permanent conservation easement; this conservation easement is to be held by the Town of Carrboro.
3. Monitor conservation easements in perpetuity.

Conditions:

1. The permanent conservation easement on the 6 acres of riparian buffer shall conform to standard CWMTF model easement and shall be held by the State of North Carolina.
2. CWMTF grant funds may not be used for stewardship expenses.
3. Match to be comprised of the following:
 - CWMTF grant up to \$202,000
 - Orange County Board of Commissioners: \$750,000
 - Town of Carrboro for remaining costs: \$6,050
4. If available, submit an electronic survey of the property (in addition to the survey required in Section 3.8) that depicts the total length of stream buffered. The survey shall depict separately the length of stream segments buffered on one side of the stream and the length of stream segments buffered on two sides of the stream.

Schedule:

1. Acquire 6 acres of riparian buffer through fee simple purchase and place under permanent conservation easement with the State of North Carolina by May 31, 2005.
2. Acquire remaining 22 acres of uplands of the tract and place under permanent conservation easement by May 31, 2005; this conservation easement is to be held by the Town of Carrboro.
3. The Fund's commitment to disburse Grant funds under this Grant Agreement shall cease on May 31, 2005.

Budget: See Exhibit B this page.

EXHIBIT B
CWMTF No. 2002A-003

Project Budget

Item	CWMTF Grant	Matching Funds	Total Project Cost
1. Acquire 6 acres of riparian buffers in fee simple	\$192,000	\$0	\$192,000
2. Acquire 22 upland acres in fee simple	\$0	\$703,500	\$703,500
3. Appraisal	\$2,500	\$0	\$2,500
4. Phase 1 Environmental Site Assessment	\$2,450	\$22,550	\$25,000
5. Survey	\$2,500	\$0	\$2,500
6. Legal Fees/Closing Costs	\$2,550	\$0	\$2,550
7. Stewardship, monitoring, management plan development	\$0	\$30,000	\$30,000
Total	\$202,000	\$756,050	\$958,050

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FILED Joyce H. Pearson
Register of Deeds Orange COUNTY, NC
BY:

Deputy *Linda Cheek*

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STATE OF NORTH CAROLINA
COUNTY OF ORANGE

P/O
PIN: 9779-80-2808
mab

Return to: Beemer Savery Walker & Sons PA

**CONSERVATION EASEMENT
ADAMS TRACT**

THIS CONSERVATION EASEMENT ("Conservation Easement") is made and executed on this the 13th day of October 2004 by and between **THE TOWN OF CARRBORO**, a public body, politic and corporate, organized and doing business as authorized in Chapter 160A of the North Carolina General Statutes, with its principal office located at 301 West Main Street, Carrboro, North Carolina 27510 (herein "Grantor") and **THE STATE OF NORTH CAROLINA**, with its address: c/o State Property Office, 1321 Mail Service Center, Raleigh, NC 27699-1321 (herein "State" or "Grantee"), acting solely through the North Carolina Clean Water Management Trust Fund, with its address at 1651 Mail Service Center, Raleigh, NC 27699-1651, (herein "Fund").

RECITALS AND CONSERVATION PURPOSES

A. Grantor is the sole owner in fee simple of the property containing 27.286 acres located in the Town of Carrboro, Chapel Hill Township, Orange County; the tract was conveyed to Grantor by Martha Adams Galli and Ann A. Adams, Trustee, etals in deed recorded in Deed Book 96, Page 42,

Orange County Register of Deeds Office, Hillsborough, North Carolina.

B. Grantor has agreed and desires to set aside and convey to the State of North Carolina, as Grantee, a Conservation Easement in and affecting that part of the Property located within three hundred feet of Bolin Creek and includes all that portion of the Property containing 7.60 acres, which area is herein referred to as "Riparian Buffer Easement Area" or "Easement Area" of Grantor's said Property; it is Grantor's intent and purpose to create and restrict that part of the Property within three hundred feet of Bolin Creek, in order to preserve, enhance, restore, and maintain the natural features and resources of this Easement Area, to provide habitat for native plants and animals, to improve, maintain and protect water quality, and to control runoff of sediment, (hereinafter referred to collectively as the "Conservation Values");

C. The protected Riparian Buffer Easement Area is shown on a survey dated "August 11, 2004, revised August 24, 2004 and September 28, 2004, entitled "Riparian Easement Plat, Adams Tract, 116 Watters Road", prepared by Philip Post & Associates, and more particularly described in **Exhibit A**, attached hereto and hereby fully incorporated by reference.

D. Grantor and Grantee recognize that the Easement Area is located within a public drinking water supply watershed, within three hundred feet of Bolin Creek, and which is deemed by the State of North Carolina to qualify as suitable for protection as a Riparian Buffer Easement Area, to address the cleanup and prevention of pollution of the State's surface waters, and as part of a network of Riparian Buffer Easement Areas. Moreover, Grantor and Grantee recognize that the Easement Area has other Conservation Values including fish and wildlife conservation, open space, and scenic values.

E. The Clean Water Management Trust Fund is an agency of the State of North Carolina, and is authorized by Article 13A, Chapter 113 of the North Carolina General Statutes to finance projects and to acquire land and interests in land, including conservation easements for Riparian Buffer Easement Areas for purposes of providing environmental protection for surface waters and urban drinking water supplies and establishing a network of riparian greenways for environmental, educational, and recreational uses; and

F. The Town of Carrboro is a public entity, politic and corporate of the State of North Carolina; it has received or will receive a grant from Fund, identified in **Grant Agreement No. 2002A-003**, the premises, covenants and conditions of which are hereby expressly incorporated by reference, and which may be enforced in the same manner as this Conservation Agreement, in consideration of its conveyance of this Conservation Easement to Fund, and for thus restricting the uses of the Riparian Buffer Easement Area on the Property. Grantor and Fund have agreed that the Riparian Buffer Easement Area shall be conserved and managed in a manner that will protect the quality of waters of Bolin Creek and streams tributary thereto, and otherwise promote the public purposes authorized by Article 13A, Chapter 113 of the North Carolina General Statutes.

G. Grantor, State and Fund (collectively referred to as the "Parties") intend that the conservation and water quality values of the Easement Area in their present state will be preserved and maintained to serve those purposes set forth by the said Grant Agreement entered into between the Grantor and the Clean Water Management Trust Fund dated and incorporated herein by reference, and available for inspection at the offices of the North Carolina Department of Environment and Natural Resources, Grantor, Grantee, and the Fund.

H. The Parties acknowledge that the characteristics of the Property and its current use and state of improvements are described an environmental report dated October 4, 2002 by Engineering Consulting Services, entitled "Phase 1, Environmental Site Assessment," and which is hereby incorporated herein by reference, and maintained on file at Grantor's office, and that this report is an appropriate basis for monitoring compliance with the objectives of preserving the conservation and water quality values of the Property. An abbreviated listing of the present conditions and characteristics of the Easement Area, its current use, state of improvements, water quality sensitive species, including rare and endangered species are described in **Exhibit B** attached hereto and by this reference incorporated herein. Incorporation of this Report and Exhibit B are not intended to preclude the use of other evidence (i.e., surveys, appraisals) to establish the present condition of the Easement Areas if there is a controversy over their use.

NOW, THEREFORE, in consideration of the premises and the mutual benefits recited herein, together with other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the parties hereto, the

Grantor, for itself, its assigns and successors hereby unconditionally and irrevocably gives, grants and conveys forever and in perpetuity to the State of North Carolina, its successors and assigns, which by the recordation of this instrument does accept, this Deed of Conservation Easement of the nature and character and to the extent hereinafter set forth, in, over, through and across that part of the Property within 300 feet of the streams as shown on the aforementioned survey, and identified as the Easement Area which includes the 300' Riparian Buffer Easement Area from intermittent streams, drainage ditches, and from Bolin Creek, (altogether totaling 7.60 acres), together with the right to preserve and protect the conservation values thereof as described in the Recitals herein. The part of the Property covered by this Conservation Easement is referred to herein as the Riparian Buffer Easement Area or Easement Area.

ARTICLE I. PURPOSES, DURATION OF EASEMENT.

The purposes of this Conservation Easement are to protect wetlands, riparian areas and surface waters within the watershed where the Easement Area is located, and to protect and preserve the forested, wildlife, natural heritage and other Conservation Values of the Riparian Buffer Easement Area, to the end that the waters flowing over it and the waters into which those waters flow may be preserved in quality and protected in their present uses, without the deleterious effects that may arise from the uses or development of the Easement Area which are prohibited herein.

The Easement Area shall be maintained in its natural, scenic and open condition, restricted from any development or use which Grantee and Fund believe might impair or interfere with the Conservation Values of the Easement Area sought to be protected by this Conservation Easement

This Conservation Easement shall be perpetual. It is an easement in gross, and runs with the land, and is enforceable by Grantee, against Grantor, its successors, grantees, representatives, permittees, assigns, lessees, agents, and licensees.

No activity or use inconsistent with the purposes of this Conservation Easement shall be conducted, permitted, or allowed on the Easement Area shown as Riparian Buffer Easement Area on the Plat.

ARTICLE II. RIGHTS RESERVED TO GRANTOR.

Grantor reserves certain rights, notwithstanding this Deed of Conservation Easement, including the rights, within the Easement Area to engage in or permit others to engage in the uses of the Riparian Buffer Easement Area that are not inconsistent with the purpose(s) of this Conservation Easement. All rights reserved by the Grantor, are reserved for Grantors, their representatives, successors, and assigns, and are considered to be consistent with the conservation purposes of this Conservation Easement. The provisions, conditions, and restrictions of this Conservation Easement apply to that part of the Property within the Riparian Buffer Easement Area. Within the Easement Area, Grantor expressly reserves the following rights:

A. Passive Recreational Use. Grantors reserve the right to engage and permit others to engage in passive recreational uses in the Easement Area, so long as such uses require no surface alteration of the land, except as may be permitted herein, and so long as such uses pose no threat to the Conservation Values identified above.

B. Greenway Trails. Grantor reserves the right to construct paved or unpaved greenway trails within the Riparian Buffer Easement Area, provided any such trails must be located at a minimum distance of fifteen (15) feet from the top of the bank of Bolin Creek, and they must comply with the rules and regulations of the Town of Carrboro Land Use Ordinance, Chapter 15, Article XVI, the Fund, and the Americans with Disabilities Act 1990, and amendments thereto. In connection with the construction of such trails and when required by the terrain, boardwalks, ramps, handrails, and steps will be permitted. The Grantor may also construct and maintain park benches, litter receptacles, and trail/feature signs along the greenway trails. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation either during or after construction. Notwithstanding any language to the contrary in this Conservation Easement, Grantor shall not allow use of the greenway trails or any portion of the Easement Area for biking or by all-terrain vehicles.

C. Observation/Viewing Platform. Grantor reserves the right to construct,

maintain, and repair one (1) observation/viewing platform with optional bench seating, handrails, connecting steps, and ramp as required by the terrain to be located at a minimum distance of fifty feet (50') from Bolin Creek, provided this platform is connected to the trails permitted herein. Construction of said platform must comply with the Americans with Disabilities Act of 1990, and amendments thereto. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation either during or after construction.

D. Pedestrian Foot Bridge. Grantor reserves the right to construct, maintain, and repair one Pedestrian Foot Bridge to be constructed five feet (5') to ten feet (10') in width across Bolin Creek in compliance with the American Association of State Highway and Transportation Officials ("AAASHTO") and the Americans with Disabilities Act 1990, and amendments thereto, provided said bridge is connected to the greenway trails permitted herein. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation either during or after construction.

E. Early Successional Habitat Areas. The Parties agree and acknowledge that the Grantor reserves the right to maintain existing areas located around Bolin Creek in early successional habitat for the purpose of providing habitat diversity for wildlife species. This maintenance may include the planting of various grasses, forbs, and herbaceous vegetation.

F. Natural Community Restoration. The Parties hereto agree and acknowledge that the Town reserves the right to perform all activities necessary to restore the natural plant and animal communities within the Easement Area. All necessary care shall be taken to complete the construction of such features in a manner so as not to cause or allow sedimentation either during or after construction.

G. Stream Restoration. The Parties hereto agree and acknowledge that the Town shall have the right to perform or to have performed stream restoration and/or stabilization measures within the Riparian Buffer Easement Area, provided such measures must be taken in accordance with the following conditions:

- i) Any such work must be approved in advance in writing by Fund;
- ii) Any contractors or agents allowed or employed for such work shall be approved in advance by Fund;
- iii) No such work may be done further than fifty feet from the top of the bank of Bolin Creek;
- iv) Grantor shall submit to the Fund a Temporary Construction and Access Easement allowing such measures, and shall not undertake such work, or contract for such undertaking, until the Easement has been executed and delivered to Grantor;
- v) Grantor shall provide intermittent and final reports during and upon the completion of the contemplated stream restoration and/or stabilization construction to the Fund for approval and review. Upon the completion of the aforementioned stream restoration and/or stabilization measures, Grantor shall promptly return the affected Riparian Buffer Easement Area to a vegetated state such that the wooded, open space character and scenic and natural qualities of the Easement Area as compared to those conditions existing on the date of this Conservation Easement within a date to be determined by the Fund are not diminished. No off-site lands may be used for mitigation purposes under this Conservation Easement as applied to this permitted activity.

Notwithstanding the foregoing, all amenities and improvements shall be subject to the prior approval of the Fund and to the terms set forth in the aforementioned Grant Agreement. The Grantor shall have the right and duty to maintain the Property in a clean, natural and undisturbed state, and shall remain the fee owner of the Property for purposes of applicable land use regulations, and other applicable laws and ordinances. The total cleared, and not re-vegetated, pervious and impervious surface areas associated with all aforesaid improvements, including, but not limited to, the trails, boardwalks, ramps, steps, pedestrian bridge, and observation/viewing platform shall not exceed ten percent (10%) of the total area of the Easement Area described by Exhibit A. Furthermore, the Parties have no right to agree to any activity that would result in the impairment or termination of this Conservation Easement.

ARTICLE III. PROHIBITED AND RESTRICTED ACTIVITIES.

Any activity on, or use of, the Easement Area inconsistent with the purposes of this Conservation Easement is prohibited.

The Easement Area shall be maintained in its natural, scenic, wooded, and open condition, and restricted from any development or use that would impair or interfere with the water quality protection and conservation purposes of this Conservation Easement, set out above.

Except for those rights specifically reserved to Grantors in Article II and without limiting the generality of the foregoing, the following is a listing of activities and uses which are prohibited, or where expressly stated, which may be permitted, within the Riparian Buffer Easement Area.

A. Industrial and Commercial Use. All industrial and commercial activities and uses, and any right of passage for such purposes, are prohibited within the Riparian Buffer Easement Area.

B. Agricultural, Timber Harvesting, Grazing and Horticultural Use. Agricultural, timber harvesting, grazing, horticultural and animal husbandry operations are prohibited within the Riparian Buffer Easement Area.

C. Disturbance of Natural Features. No trees may be cut or removed, and the natural features of the Riparian Buffer Easement Area may not be disturbed, except for: (1) as may be incidental to boundary marking, fencing, and signage allowed or required hereunder; (2) selective cutting and prescribed burning or clearing of vegetation and the application of mutually approved pesticides and fire containment and protection, disease control, restoration of hydrology, wetlands enhancement and/or control of non-native plants, all subject however, to prior approval of the Fund, (3) hunting and fishing pursuant to applicable rules and regulations.

D. Construction of Buildings and Recreational Use. There shall be no construction or placement of any building, mobile home, asphalt or concrete

pavement, billboard or other advertising display, antenna, utility pole, tower, conduit, line, pier, landing, dock or other temporary or permanent structure or facility on, above, or below the surface of the Easement Area, except for the following: placing and display of no trespassing signs, local, state or federal traffic or similar informational signs, for sale or lease signs, fencing, signs identifying the Conservation Values of the Property, and/or signs identifying the Fund or the Town of Carrboro as the owner or source of funds for the conservation easements in the Easement Area, educational and interpretive signs, identification labels or any other similar temporary or permanent signs, all subject, however, to the prior approval of the Fund.

E. Mineral Use, Excavation, Dredging. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials; and no change in the topography of the Easement Area in any manner, except as may be necessary for the purpose of combating erosion or incidental to any conservation management practices otherwise permitted by this Conservation Easement.

F. Wetlands and Water Quality. There shall be no pollution or alteration of water bodies and no activities that would be detrimental to water purity or that would alter natural water levels, drainage, sedimentation, and/or flow in or over the Easement Area or into any surface waters, or cause soil degradation or erosion, nor diking, dredging, alteration, draining, filling or removal of wetlands, except activities to restore natural hydrology or wetlands enhancement as permitted by state and other appropriate authorities, all with the prior consent of Fund.

G. Dumping. Dumping of soil, trash, ashes, garbage, or waste, abandonment of vehicles, appliances, or machinery, or other waste or discarded materials, is prohibited on the Easement Area.

H. Conveyance and Subdivision. The Easement Area may not be subdivided from, partitioned from, or conveyed separate from the Property, and the Property shall remain in its current configuration as an undivided entity or block of Property.

I. No Use as Mitigation Property. There shall be no use of the Easement Area to satisfy compensatory mitigation requirements under any federal

or state law, nor may any part of the Easement Area be used or referenced so as to allow density credits to be allowed or added to any other property for development purposes.

ARTICLE IV. ENFORCEMENT & REMEDIES

To accomplish the purposes of this Conservation Easement, Grantee is allowed to prevent any activity on or use of the Easement Area that is inconsistent with the purposes of this Conservation Easement, and to require the restoration of such areas or features of the Easement Area that have been damaged or altered by such activity or use. Upon any breach of the terms of this Conservation Easement, Grantee, by and through Fund or any other agency of the State, may seek the enforcement of the Grantee's rights hereunder, including enforcement of the restrictions and prohibitions contained herein, in accordance with the following provisions.

A. Notice and Obligation to Cure; Injunctive Relief. Upon any determination that a violation of this Conservation Easement has occurred, is being maintained, or is threatened, Grantee, or any assign or successor of Grantee, shall have standing and may bring suit either individually or jointly to enforce compliance with the terms of this Conservation Easement and shall be entitled to obtain any relief available at law or in equity under the laws of this State, therein to enforce compliance with the terms of this Conservation Easement.

Unless an imminent or ongoing violation of this Conservation Easement would sooner substantially impair any Conservation Values of the Easement Area, Grantee shall give the owner of the Easement Area written notice of the violation and thirty days to correct the violation and comply with the Conservation Easement, or to commence cure if such cure would take longer than thirty days, before filing legal action.

In the event a Court of competent jurisdiction determines that Grantors, or any successor, grantee, assign or licensee have committed or permitted a violation of the Conservation Easement, Grantee shall be entitled to injunctive relief requiring cessation of the violation and cure of any damages to the Easement Area, and to

recover of those permitting or conducting activities in violation of this Conservation Easement any damages caused to Grantee, or to its interests in the said Easement Area, by such violation, including reasonable costs and attorneys fees in obtaining such relief.

No failure or delay by Grantee in seeking its lawful remedy for any breach of this Conservation Easement may be pled or asserted as a defense to any action by Grantee in seeking its lawful remedy for any subsequent violation of the Conservation Easement.

Grantee shall have the power and authority, consistent with statutory authority and its rights hereunder, (a) to prevent any impairment of the Easement Area by acts which may be unlawful or in violation of this Conservation Easement; (b) to otherwise preserve or protect its interest in the Easement Area; and/or (c) to seek damages from any appropriate person or entity. The rights and remedies of the Grantee provided hereunder shall be in addition to, and not in lieu of, all other rights and remedies available in connection with this Conservation Easement.

B. Violations by Third Parties. Nothing contained in this Conservation Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury or change in the Easement Area caused by third parties, resulting from causes beyond the Grantor's control, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to property or harm to the Easement Area.

C. Changed Conditions. The grant of this Conservation Easement gives rise to a property right immediately vested in the Grantee, with a fair market value equal to the proportionate value that this Conservation Easement bears to the value of the Property as a whole. That proportionate value of Grantee's property rights shall remain constant. If a change in conditions occurs, which makes impossible or impractical any continued protection of the Property for conservation purposes, the restrictions contained herein may only be extinguished by judicial proceeding. If this Conservation Easement is terminated and the Property is sold, then as required by Section 1.170A-14(g)(6) of the IRS regulations, the Grantee, its successors and assigns, shall be entitled to a portion of the proceeds of any sale, exchange, involuntary conversion of the Property or damage award which is the result of such judicial proceeding. Upon such proceedings, such portion shall be

equal to the proportionate value that Grantee's, its successors' and assigns' interest that this Conservation Easement bears to the value of the Property as a whole as of the date of the recording of this Conservation Easement. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred, or contributed in consideration for, or as otherwise required as a condition of sale, exchange or involuntary conversion of the Property, or any damages otherwise awarded as a result of judicial proceeding, minus the Grantor's expenses from such transaction or proceeding. Grantee, its successors and assigns, shall use its share of the proceeds of sale in a manner consistent with the Conservation Purposes set forth herein.

All termination related expenses incurred by the Grantors and the Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

D. Condemnation. Whenever all or part of the Property is taken by exercise of eminent domain by public, corporate, or other authority, or by negotiated sale in lieu of condemnation, so as to abrogate the restrictions imposed by these Restrictive Covenants, the Grantor shall immediately give notice to the Grantee, State, and the Fund, and shall take all appropriate actions at the time of such taking or sale to recover the full value of the taking, and all incidental or direct damages resulting from the taking, which any proceeds recovered in such actions shall be divided in accordance with the proportionate values of Grantor's and Grantee's interests as specified herein; all expenses including attorneys fees incurred by Grantor and Grantee in such action shall be paid out of the recovered proceeds to the extent not paid by the condemning authority. If these Restrictive Covenants are terminated or modified and any or all of the Property is sold or taken for public use, then, as required by Section 1.170A-14(g)(6) of the IRS regulations, the Grantee, its successors and assigns shall be entitled to a portion of the proceeds of such sale, exchange or involuntary conversion of the protected Property, or any damage award with respect to any judicial proceeding. Such portion shall be equal to the proportionate value that Grantee's, its successors' or assigns' interest to the value of the Property as a whole as of the date of recording of these Restrictive Covenants. "Proceeds of Sale" shall mean the cash value of all money and property paid, transferred, or contributed in consideration for, or as otherwise required as a condition of sale, exchange or involuntary conversion of the Conservation Property, or any damages otherwise awarded as a result of judicial

proceeding, minus the Grantor's expenses from such transaction or proceeding. Grantee, its successors and assigns, shall use its share of the proceeds of sale in a manner consistent with the Conservation Purposes set forth herein.

All termination related expenses incurred by the Grantors and the Grantee shall be paid out of any recovered proceeds prior to distribution of the net proceeds as described herein.

E. Access for Inspection and Right of Entry. Grantee shall have the right, by and through their agents and employees, to enter the Property to inspect the same for compliance with this Conservation Easement.

F. Costs of Enforcement. In the event of violation of the terms and conditions of this Conservation Easement by Grantor, any costs incurred by Grantee, including reasonable attorneys fees, in enforcing this Conservation Easement against Grantor, and including any costs of restoration necessitated by Grantor's acts or omissions in violation of the terms of this Conservation Easement, shall be reimbursed by Grantor to Grantee.

G. No Waiver. Enforcement of this Conservation Easement shall be at the discretion of the Grantee, and any forbearance by Grantee to exercise its rights hereunder in the event of any breach of any term set forth herein shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Conservation Easement or of Grantee's rights. No delay or omission by Grantee in the exercise of any right or remedy shall impair such right or remedy or be construed as a waiver.

H. Indemnity. To the extent allowed by law, Grantor agrees to defend, protect, indemnify, and hold harmless the Grantee, its successors and assigns, from and against all claims, actions, liabilities, damages, fines, penalties, costs, and expenses resulting from (1) its intentional or negligent misrepresentation of the environmental condition of the Easement Area; or (2) any action or forbearance by the Grantor in the future which causes or contributes to the existence of any environmentally hazardous or illegal condition on the Easement Area harmful to the environmental, conservation or water quality values of the Easement Area .

ARTICLE V. DOCUMENTATION AND TITLE

A. Easement Area. The parties acknowledge that the Property is currently undeveloped land.

B. Title. Grantor covenants and represents that Grantor is the sole owner and is seized of the Property in fee simple and has good right to grant and convey the aforesaid Conservation Easement; that there is legal access to the Property, that the Property is free and clear of any and all encumbrances, except easements of record, and Grantor covenants that the Grantee shall have the use of and enjoy all of the benefits derived from and arising out of the aforesaid Conservation Easement; provided, absent Grantor's consent, Grantee's right of access may not be assigned separately and shall only be exercised for the purposes provided herein.

ARTICLE VI. MISCELLANEOUS

A. Subsequent Transfers of Property by Grantor. Grantor agrees for itself, its successors and assigns, that at or before any transfer of any interest in the Property, Grantor shall notify Grantee in writing of the name and address of any party to whom the Property, or any part thereof, is to be transferred. Grantors, for itself, its successors and assigns, further agrees to make specific reference to this Conservation Easement in a separate paragraph of any subsequent lease, deed or other legal instrument by which any interest in the Property is conveyed, pointing out that any such conveyance is made subject to the terms and restrictions of this Conservation Easement, and continuing to provide for Grantee's right of entry and access over the Property to the Easement Area.

B. Conservation Purposes for which Conservation Easement is Held. Grantee, , for itself, its successors and assigns, agrees that this Conservation Easement shall be held exclusively for the conservation purposes set out herein.

The Parties recognize and agree that the Easement Area, when opened for public use, shall be open for public entry and public use, and shall be open to entry and use equally by all persons, regardless of race, color, creed, national origin, sex, or residence, subject to reasonable published and posted rules governing use of the Easement Area by the Grantor, as approved by the Fund, and consistent with the conservation purposes provided by this Conservation Easement.

C. Qualification of Successor Grantees. The parties hereto recognize and agree that the benefits of this Conservation Easement are in gross and assignable, provided, however that the Grantee hereby covenants and agrees, that in the event of transfers or assignment of its interest in this Conservation Easement, the organization receiving the interest must be a qualified organization as that term is defined in Section 170(h)(3) of the Internal Revenue Code of 1986 (or any successor section) and the regulations promulgated thereunder, and must be one organized or operated primarily for one of the conservation purposes specified in Section 170 (h)(4)(A) of the Internal Revenue Code, and the Grantee further covenants and agrees that the terms of the transfer or assignment will be such that the transferee or assignee will be required to continue to carry out in perpetuity the conservation purposes that the contribution was originally intended to advance, set forth in the Recitals herein.

D. Construction of Terms. This Conservation Easement shall be construed to promote the purposes of the North Carolina enabling statute set forth in N.C.G.S. 121-34, which authorizes the creation of conservation easements for purposes including those set forth in the Recitals herein, and the conservation purposes of this Conservation Easement, including such purposes as are defined in Section 170(h)(4)(A) of the Internal Revenue Code.

E. Recording. Grantor shall record this instrument and any amendment hereto in timely fashion in the official records of Orange County, North Carolina, and may re-record it at any time as may be required to preserve its rights.

F. Notices. Any notices required to be sent under this Conservation Easement shall be sent by certified mail, return receipt requested, addressed to the parties set forth, and addressed to the record owner of the Property, as shown in the Orange County Tax Office, or as follows:

If to Grantor:

The Town of Carrboro
301 West Main Street
Carrboro, NC 27510
Attn. Town Manager

If to Grantee:

State Property Office and
116 West Jones Street
Raleigh, NC 27611

NC Clean Water Management Trust Fund
530 North Wilmington Street
Raleigh, NC 27604

In any case where the terms of this Conservation Easement require the consent of any party, such consent shall be requested by written notice, and shall be deemed to be denied unless within 90 days after mailing the receipt, written notice of such consent shall have been given the requesting party by the party of whom such consent was requested.

G. Amendments. No amendment to this Conservation Easement shall be effective unless executed by the owner of the Property and the Grantee, or their successors or assigns hereunder. No amendment will be allowed that is inconsistent with the purposes of this Conservation Easement or affects the perpetual duration of this Conservation Easement. No amendment executed by the parties as required above shall be effective until recorded in the Office of the Orange County Register of Deeds.

H. Environmental Condition of Property. The Grantor warrants and represents to the State that to the best of its knowledge: (a) the Easement Area described herein is now and at all times hereafter will continue to be maintained in full compliance with all federal, state and local environmental laws and regulations, and (b) as of the date hereof there are no hazardous materials, substances, wastes, or environmentally regulated substances (including, without limitation, any materials containing asbestos, petroleum, or any toxic substance or ingredient) located on, in or under the Easement Area or being used in connection therewith, and that there is no environmental condition existing on the Easement Area that may prohibit or impede use of the Easement Area for the purposes set forth in the Recitals.

I. Entire Agreement. This instrument sets forth the entire agreement of the Parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

J. Interpretation. This Conservation Easement shall be construed and interpreted under the laws of the State of North Carolina, and any ambiguities herein shall be resolved so as to give maximum effect to the conservation purposes sought to be protected herein.

K. Parties. Every provision of this Conservation Easement that applies to the Grantors or Grantee shall likewise apply to their respective heirs, executors, administrators, assigns, and grantees, and all others of their successors in interest herein.

L. Merger. The parties agree that the terms of this Conservation Agreement shall survive any merger of the fee and easement interest in the Easement Area.

M. Subsequent Liens on Property. No provisions of this Conservation Easement shall be construed as impairing the ability of Grantor to use this Property or any portion thereof, for collateral for borrowing purposes, provided that any mortgage or lien arising therefrom and recorded after the recordation of this Conservation Easement shall be subordinate to this Conservation Easement.

TO HAVE AND TO HOLD unto THE STATE OF NORTH CAROLINA, its successors, grantees, and assigns, forever. The covenants agreed to and the terms, conditions, restrictions and purposes imposed as aforesaid shall be binding upon Grantor, Grantor's representatives, heirs, successors, grantees, and assigns, and shall continue as a servitude running in perpetuity with the Property.

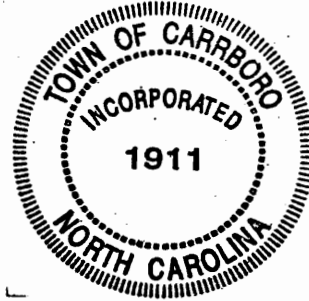
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IN WITNESS WHEREOF, Grantor, by authority duly given, has hereunto caused these presents to be executed by its officers and its seal affixed, to be effective the day and year first above written.

GRANTOR: TOWN OF CARRBORO

[Corporate Seal]

By: *Steven E. Stewart*
Steven E. Stewart, Town Manager



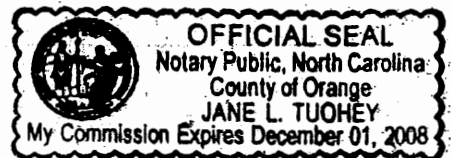
ATTEST:

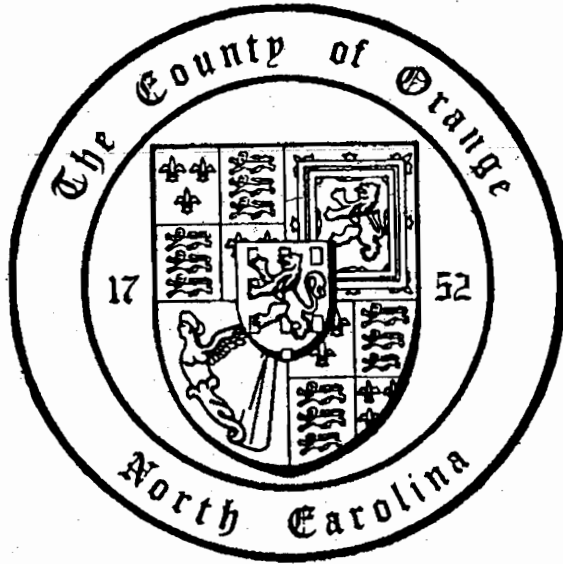
By: *Sarah C. Williamson*
Sarah Williamson, Town Clerk

NORTH CAROLINA
ORANGE COUNTY

I, *Jane L. Tuohy*, Notary Public in and for said County and State, do hereby certify that Sarah Williamson, personally came before me this day and acknowledged that she is the Town Clerk of the Town of Carrboro, a municipal corporation organized and existing under the laws of the State of North Carolina, and that by authority duly given and as the act of Town of Carrboro, the foregoing instrument was signed in its name by Steven E. Stewart, Town Manager, sealed with GRANTOR'S seal, and attested by herself as Sarah Williamson, Town Clerk. Witness my hand and notarial seal, this 13 day October 2004.

NOTARY PUBLIC: *Jane L. Tuohy*
My Commission Expires: 12-01-2008





Joyce H. Pearson
Register of Deeds
Orange County
North Carolina

State of North Carolina, County of Orange

The foregoing certificate(s) of JANE L. TUOHEY, NOTARY PUBLIC for the Designated Governmental units is/are certified to be correct. See filing certificate herein.

This day October 15, 2004.

Joyce H. Pearson, Register of Deeds

BY: Linda C. Perkins
Deputy / ~~Assistant~~ Register of Deeds

Yellow probate sheet is a vital part of your recorded document. Please retain with original document and submit for recording.

Appendix VI – Orange County Conservation Easement¹

N.B. A summary of the Orange County conservation easement is included below and is followed by the full deed of easement.

“To ensure that the Easement Area will be retained forever predominantly in its natural, forested, and open space condition; to protect native plants and animals, or plant communities on the easement Area, while allowing certain limited uses on the Easement Area, such as research and educational activities that will not impair or interfere with the conservation values or interests of the Easement Area.”

Allowable Uses

1. Paved or unpaved trails for pedestrian use only (no more than 10’ wide) ; bicycles only allowed on OWASA easement running from Wilson Park to Estes Drive Extension ; wooden steps and bridges allowed when required by terrain.
2. Picnic tables, benches, kiosks, and interpretive signs.
3. Recreational uses including hiking, picnicking, and other recreational uses that require no buildings, facilities, surface alteration, or other development of the land (aside from other things specifically allowed).
4. Removal or diseased growth or invasive species. Trapping or destroying of predators or other problem animals.

Required Actions

1. On the 7.6 acres also covered by the state easement as well, the more restrictive conservation requirements shall apply.

Prohibited Uses

1. Outdoor lighting or utility poles, towers, conduit, or lines.
2. Agricultural uses or grazing ; commercial or industrial development ; timber harvesting except to prevent damage or personal injury or to control insects / disease ; hunting ; excavating, mining, or drilling ; dumping ; changes in topography *except for that necessary to maintain trails or combat erosion* ;
3. Planting of non-native species.
4. Pollution of any surface water or groundwater or alteration of existing waterways or bodies of water.
5. Use of pesticides or biocides *except for control of invasive species*.
6. Subdivision of property.

¹ Excerpted from the Deed of Conservation Easement



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Bk:RB3585 Pg:316
10/15/2004 11:20:54AM 1/17

FILED Joyce H. Pearson
Register of Deeds Orange COUNTY, NC
BY:

Deputy *Linda Clarke*

5

Prepared by and return to: Geoffrey E. Gledhill; Coleman, Gledhill, Hargrave and Peek;
P.O. Drawer 1529; Hillsborough, NC 27278

NORTH CAROLINA
COUNTY OF ORANGE

**WARRANTY
DEED OF CONSERVATION EASEMENT**

This Grant of Conservation Easement (hereinafter "Conservation Easement") is made the 13th day of October, 2004 by the **TOWN OF CARRBORO, NORTH CAROLINA**, having an address of 301 West Main Street, Carrboro, NC 27510 (hereinafter "Grantor") and **ORANGE COUNTY, NORTH CAROLINA**, having an address of Post Office Box 8181, Hillsborough, NC 27278 (hereinafter "Grantee").

The designation Grantor and Grantee as used herein shall include said parties, their heirs, successors and assigns, and shall include singular, plural, masculine, feminine or neuter pronouns as required by context.

RECITALS

A. The Grantor is a North Carolina municipal corporation, and is the sole owner in fee simple of certain Property, more particularly described in Exhibit A, attached hereto and incorporated herein (the "Property") which consists of approximately 27 acres of land, located in Chapel Hill Township, Orange County, North Carolina, and identified as Tract 1, containing 27.286 acres, more or less, as shown on the plat of property titled "MINOR SUBDIVISION PLAT, Adams Tract, 116 Watters Road," prepared by Philip Post & Associates, which plat is recorded at Plat Book 96 Page 38, Orange County Registry (PIN 9779-80-2808 *map*). The property includes the improvements that are described in Exhibit B, attached hereto and incorporated herein.

These lands, comprising approximately 27.286 acres, are hereinafter referred to as either "the Property," "the Grantor's Property" or the "Easement Area." The Grantor wishes to maintain the Property as a woodland suitable as habitat for the native flora and fauna of the North Carolina Piedmont, and to maintain the Property for certain public outdoor recreation uses as more

particularly described herein, and to protect the quality of water running off from this land and into Bolin Creek, which river also has conservation value.

B. The Grantee is a body politic existing under Chapter 153A of the North Carolina General Statutes.

C. The Easement Area is a significant natural area that qualifies in its present condition as a "...relatively natural habitat of fish, wildlife, or plants, or similar ecosystem," as that phrase is used in P.L. 96-541, 26 UCS 170(h)(A)(ii), as amended, and in regulations promulgated thereunder. Specifically, the Easement Area is habitat for a variety of native plants and animals described on Pages 34-35 of the *Inventory of the Natural Areas and Wildlife Habitats of Orange County, North Carolina*, written by Dawson Sather and Stephen Hall and conducted for the Triangle Land Conservancy in coordination with the North Carolina Natural Heritage Program in December 1988. The native plants and animals include tulip poplar, beech, red oak, white oak, cherrybark oak, post oak, blackjack oak, shagbark hickory, pignut hickory, umbrella magnolia, trillium, dwarf crested iris, Devil's bit, four-toed salamander, flicker, phoebe, and barred owl. Following is an excerpt from the Natural Heritage Inventory:

"Reasons for significance: This is one of the few remaining wooded stream corridors in the vicinity of Chapel Hill and Carrboro. It includes one of only nine sites where the four-toed salamander (Hemidactylium scutatum), a state-listed species of unknown distribution, has been recorded in the county."

One of the most outstanding aesthetic features is the small bluff just upstream from the Southern Railway trestle, where the stream takes a 90-degree bend. Above this rocky bend, the forest is dominated by beech trees (Fagus grandifolia) and other hardwoods that descend to the creek.

The conservation purposes of this easement, notwithstanding anything to the contrary contained herein, are also recognized by, and this Conservation Easement will also serve, the following clearly delineated governmental conservation policies:

(1) the Orange County Board of Commissioners' goal (adopted June 21, 1999) to identify and coordinate the preservation of the County's most significant natural areas; and

(2) the Land Use Element of the Orange County Comprehensive Plan (adopted September 2, 1981 as amended) with its goal of conserving and protecting Orange County's significant "Resource Protection Areas" from adverse development impacts, including natural areas, wildlife corridors and lands placed by individual property owners into conservation easements; and

(3) the protection of similar Orange County properties designed to protect conservation and open space values through conservation easements granted to the Grantee and others in the vicinity of the Grantor's Property; and

(4) Article 17 of the North Carolina General Statutes 113A-24, entitled Conservation, Farmland and Open Space Protection and Coordination, otherwise known as the "Million Acre Initiative," which provides that the State of North Carolina shall encourage, facilitate, plan, coordinate, and support appropriate federal, State, local, and private land protection efforts so that an additional one million acres of farmland, open space and conservation lands in the State are permanently protected by December 31, 2009; and

(5) the requirement by the State of North Carolina of a basinwide management plan for the Cape Fear River, for the purpose of protecting water quality, public water supply, significant wetlands and natural areas within the watershed; and

(6) the Clean Water Management Trust Fund, NCGS 113-145.1 *et seq.*, which recognizes the importance of protecting riparian buffers in protecting and conserving clean surface water; and

(7) the Land and Water Conservation Fund (16 USC 4601 - 4601-11) established by the Recreation Coordination and Development Act (PL 88-29, approved May 28, 1963, 77 Stat. 49), which assists in preserving, developing, and assuring accessibility to all citizens of the United States of present and future generations and visitors who are lawfully present within the boundaries of the United States such quality and quantity of outdoor recreation resources as may be available and are necessary and desirable for individual active participation in such recreation and to strengthen the health and vitality of the citizens of the United States.

The natural and wildlife habitat resources of the Property, and its contribution to the outdoor recreational opportunities in this urban area, and its contribution to the protection of the open space and cultural resources of the Town of Carrboro, and the other conservation interests described herein are collectively referred to as the "conservation values" of the Easement Area.

D. The characteristics of the Easement Area, its current use and state of improvement, are depicted on an Orange County GIS map and sketch of the Easement Area and other adjoining property of Grantor prepared by Grantee for the Grantor, which is attached as Exhibit B to this Conservation Easement and incorporated herein by reference. The Grantor worked with the Grantee to ensure that the GIS map and sketch is a complete and accurate description of the Easement Area as of the date of this Conservation Easement. It will be used by the Grantor and Grantee to assure that any future changes in the use of the Easement Area will be consistent with the terms of this Conservation Easement. However, the GIS map and sketch is not intended to preclude the use of other evidence to establish the present condition of the Easement Area if there is a question about its use. The Grantor and Grantee have copies of Exhibit B. The original of Exhibit B will remain on file at the Office of the Orange County Environment and Resource Conservation Department.

E. The Grantor and Grantee have the common purpose of conserving the above-described conservation values of the Easement Area in perpetuity, and the State of North Carolina has authorized the creation of Conservation Easements pursuant to the terms of the North Carolina Conservation and Historic Preservation Agreements Act, N.C. Gen. Stat. §

121-34 *et seq.*, and N.C. Gen. Stat. §§ 160A-266 - 279, which provide for the enforceability of restrictions, easements, covenants or conditions "appropriate to retaining land or water areas predominantly in their natural, scenic or open condition or in agricultural, horticultural, farming, or forest uses," and the Grantor and Grantee wish to avail themselves of the provisions of those laws.

F. Grantor and Grantee recognize that a 7.6 acre portion of the Grantor's Property is also subject to a Conservation Easement in favor of the State of North Carolina acting through the North Carolina Clean Water Management Trust Fund, said Conservation Easement being depicted on a "Riparian Easement Plat, Adams Tract, 116 Watters Road," prepared by Philip Post & Associates and dated August 11, 2004, revised August 24, 2004, September 28, 2004 and October 15, 2004; said Conservation Easement and Riparian Easement Plat being recorded in the Orange County Register of Deeds Office on October 15, 2004. Should the terms of this instrument and the terms of the State Conservation Easement conflict, then on the 7.6 acre area subject to the State Conservation Easement, the terms of the easement that more restrictively protect the conservation values in this easement and in the Conservation Easement in favor of the State of North Carolina shall take precedence.

NOW, THEREFORE, the Grantor, for and consideration of the facts recited above and of the mutual covenants, terms, conditions and restrictions contained herein, hereby gives, grants and conveys unto the Grantee, its successors and assigns, forever and in perpetuity for the benefit of the people of North Carolina, a Conservation Easement over the Easement Area of the nature and character as follows:

1. **PURPOSE.** The purposes of this Conservation Easement are to ensure that the Easement Area will be retained forever predominantly in its natural, forested, and open space condition; to protect native plants and animals, or plant communities on the Easement Area, while allowing certain limited uses on the Easement Area that are compatible with and not destructive of the conservation values of the Easement Area, such as research and educational activities that will not impair or interfere with the conservation values or interests of the Easement Area.

Grantor will not perform, nor knowingly allow others to perform, any act on or affecting the Easement Area that is inconsistent with the purposes of this Conservation Easement. However, unless otherwise specified below, nothing in this Conservation Easement shall require the Grantor to take any action to restore the condition of the Easement Area after any act of God or other event over which Grantor had no control. Grantor understands that nothing in this Conservation Easement relieves it of any obligation or restriction on the use of the Easement Area imposed by law.

2. **EASEMENT AREA USES.** Any activity on, or use of, the Easement Area inconsistent with the purposes of this Conservation Easement is prohibited. The Easement Area shall be maintained in its natural and open condition and restricted from any development that would impair or interfere with the conservation values of the Easement Area. Without limiting the generality of the foregoing, the following is a listing of activities and uses which are

expressly prohibited or which are expressly allowed. Grantor and Grantee have determined that the allowed activities do not impair the conservation values of the Easement Area. Additional retained rights of Grantor are set forth in Paragraph 3 below.

2.1 Subdivision. The Property may not be divided, subdivided or partitioned, nor conveyed except in its current configuration as an entity.

2.2 Construction. Grantor shall have the right to construct and maintain paved or unpaved trails, for pedestrian or bicycle use only, within the Easement Area as long as the trails are no more than 10 feet wide and are constructed and located in compliance with both the guidelines of the state Clean Water Management Trust Fund, the federal Land and Water Conservation Fund and with the Site Plan provided as Exhibit B. The trails may include wooden steps or bridges where they are required by the terrain. New trails shall be located a minimum of fifteen (15) feet from the top of the bank of Bolin Creek and away from it and its tributaries, and should be sited so as to not cause disturbance to the conservation values of the Easement Area.

Grantor has the right to construct or install picnic tables, benches, kiosks and interpretive signs within the Easement Area. No other structures may be placed or constructed in the Easement Area. Furthermore, there shall be no constructing or placing of any outdoor lighting, utility pole, utility tower, conduit or line on or above the Easement Area.

2.3 Maintaining Improvements. Grantor shall have the right to maintain, remodel, and repair permitted improvements, and in the event of their destruction, to reconstruct any permitted improvement with another of similar size, function, capacity, location and material.

2.4 Agricultural Use. Agricultural uses on the Easement Area are prohibited.

2.5 Timber Harvest. Commercial timbering of trees within the Easement Area is prohibited. Trees may be removed, cut and otherwise managed to control insects and disease and to prevent personal injury and property damage. Cutting, removal or harvesting of trees except as expressly allowed in this Section 2.5 shall be permitted only with the written permission of the governing board of Grantee and then only in accordance with a Forest Management Plan which shall be in writing and approved by both Grantor and Grantee and provided further that any approved "timber roads" shall be constructed of permeable materials and shall be no wider than eight (8) feet.

2.6 Grazing. Grantor shall not graze or pasture domestic animals on the Easement Area for any purposes.

2.7 Recreational Use. Consistent with the purpose of and the limitations contained in this Conservation Easement, Grantor shall have the right to engage in and permit others, whether or not for consideration, to engage in recreational uses of the Property, including hiking, picnicking, and other recreational uses that require no buildings, facilities, surface alteration or other development of the land outside of what is allowed in Section 2.2. Pursuit of

and the killing of wildlife by any means is prohibited on the Property except as expressly provided in Section 2.14. Grantor shall promulgate and enforce reasonable rules and regulations for all activities incident to recreational use of the Easement Area, including but not limited to prohibiting any recreational use that would permit destruction of one or more of the conservation values of the Easement Area.

2.8 Excavation. There shall be no filling, excavation, dredging, mining or drilling; no removal of topsoil, sand, gravel, rock, peat, minerals or other materials; and no change in the topography of the land in any manner except as necessary to allow a) the construction of the permitted improvements, b) the maintenance of permitted hiking and biking trails, and c) the combating of erosion or flooding.

2.9 Destruction of Plants. Grantor shall have the right to cut and remove diseased trees, shrubs, or other plants, to cut and remove invasive (usually non-native) trees, shrubs and other plants, and to cut firebreaks. Grantor shall also have the right to cut and remove trees, shrubs, or other plants to accommodate the activities expressly allowed under this Conservation Easement. There shall be no other removal, harvesting, destruction or cutting of native trees, shrubs or other plants. Except for use around improvements, there shall be no planting of non-native trees, shrubs, or other plants in the Easement Area. Furthermore, except to accommodate the activities expressly permitted in this Conservation Easement, there shall be no use of fertilizers, plowing, introduction of non-native animals, or disturbance or change in the natural habitat in any manner.

2.10 Water Quality and Drainage Patterns. There shall be no pollution of surface water, natural water courses, lakes, ponds, marshes, subsurface water or any other water bodies, nor shall activities be conducted on the Easement Area that would be detrimental to water purity or, except as specified herein, that could alter the natural water level or flow in or over the Easement Area. There shall be no alteration, depletion or extraction of surface water, natural watercourses, lakes, ponds, marshes, subsurface water or any other water bodies on the Easement Area. Diking, draining, filling or removal of wetlands is prohibited.

2.11 Signage. No signs or billboards or other advertising displays are allowed on the Easement Area except as follows: signs authorized by Town of Carrboro zoning regulations whose placement, number and design do not diminish the scenic character of the Easement Area may be displayed to identify trails and the conservation values of the Easement Area, to identify the name and address of the Grantor and Grantee, to give directions, to advertise or regulate permitted uses on the Easement Area and prescribe rules and regulations for recreational use of the Easement Area.

2.12 No Biocides. There shall be no use of pesticides or biocides, including but not limited to insecticides, fungicides, rodenticides, and herbicides, except as required to control invasive species detrimental to the conservation values of the Easement Area.

2.13 No Dumping. There shall be no storage or dumping of trash, garbage, abandoned vehicles, appliances, or machinery, or other unsightly or offensive material,

hazardous substance, or toxic waste on the Easement Area. There shall be no changing of the topography through the placing of soil or other substance or material. There shall be no land fill or dredging spoils, nor shall activities be conducted on the Easement Area that could cause erosion or siltation on the Easement Area.

2.14 Predator Control. Grantor shall have the right to control, destroy, or trap predatory and problem animals that pose a material threat to livestock and/or humans by means and methods expressly approved in writing by Grantee. The method employed shall be selective and specific to individuals, rather than broadcast, nonselective techniques.

2.15 Commercial Development. All commercial or industrial uses of or activity within the Easement Area is prohibited. This restriction on use shall not be construed to prohibit use of the Easement Area for recreational, educational and scientific purposes, as long as such activities are undertaken on a noncommercial basis and otherwise as permitted by this Conservation Easement.

2.16 Development Rights. With the exception of the right to construct and use permitted improvements authorized elsewhere in this Conservation Easement, Grantor conveys to Grantee all development rights that are now or hereafter allocated to, implied, reserved or inherent in the Easement Area, and the parties agree that such rights are terminated and extinguished, and may not be used on or transmitted to any portion of the Easement Area, as it now or hereafter may be bounded or described, or to any other property.

3. **ADDITIONAL RIGHTS RETAINED BY GRANTOR.** Grantor retains the following additional rights:

- (a) Existing Uses. The right to undertake or continue any activity or use of the Easement Area not prohibited by this Conservation Easement. Prior to making any change in use of the Easement Area, Grantor shall notify Grantee in writing to allow Grantee a reasonable opportunity to determine whether such change would violate the terms of this Conservation Easement.
- (b) Transfer. The right to sell, give, mortgage, lease, or otherwise convey the Easement Area is and shall always be subject to the terms of this Conservation Easement.

4. **GRANTEE'S RIGHTS.** To accomplish the purpose of this Conservation Easement, the following rights are granted to Grantee by this Conservation Easement. The granting to the Grantee of the rights articulated in this Paragraph does not impose the obligation on the Grantee for the upkeep or maintenance of the Easement Area:

- (a) Right to Protect. The right to preserve and protect the conservation values of the Easement Area and enforce the terms of this Conservation Easement.

- (b) Right of Entry. Grantee, its employees, representatives, and agents and its successors and assigns, have the right, after prior reasonable notice to Grantor, to enter the protected Easement Area periodically for the purposes of: (a) inspecting the protected Easement Area to determine whether the Grantor, its representatives, assigns, heirs, successors, invitees and the public using the Property are complying with the covenants and purposes of this Conservation Easement; and (b) monitoring and research as described below.

- (c) Monitoring and Research. The right, but not the obligation, to monitor the native plant and wildlife populations, plant communities and natural habitats on the Easement Area. Grantee agrees that all monitoring activity, inventory and assessment work or other natural resource research conducted by Grantee or others shall be reported to Grantor. Grantor agrees that all monitoring activity, inventory and assessment work or other natural resource research conducted by Grantor or others shall be reported to Grantee.

- (d) Management of Exotics and Invasive Species. The right, but not the obligation, to control, manage or destroy exotic non-native species or invasive species of plants and animals that threaten the conservation values of the Easement Area. Grantee will consult with Grantor prior to implementing control activities.

5. **RESPONSIBILITIES OF GRANTOR AND GRANTEE NOT AFFECTED.**

Other than as specified herein, this Conservation Easement is not intended to impose any legal or other responsibility on the Grantor, or in any way to affect any existing obligation of the Grantor as owner of the Property. Among other things, this shall apply to:

- (a) Upkeep and Maintenance - The granting of this Conservation Easement shall not in and of itself be construed to create or impose upon the Grantor any obligation for the upkeep or maintenance of the Easement Area except to the extent elsewhere required by this Conservation Easement.

6. **ACCESS.** No right of access by the general public to any portion of the Easement Area is conveyed by this Conservation Easement. The parties hereby acknowledge that the Grantor intends to make the Property open and available to the public for certain low-impact recreational use as expressly permitted in this Conservation Easement.

7. **ENFORCEMENT.** The Grantee shall have the right to prevent and correct violations of the terms of this Conservation Easement.

(a) With reasonable notice the Grantee may enter the Easement Area for the purpose of inspecting for violations. If the Grantee finds a violation, it may, in its discretion, take appropriate legal action. Except when an ongoing or imminent violation could substantially diminish or impair the conservation values of this Conservation Easement, the Grantee shall give the Grantor written notice of the violation and thirty (30) days to correct it (or begin good faith

efforts to correct in the event the violation is something which cannot be reasonably corrected in thirty (30) days) before filing any legal action. Grantee has the right to enforce the terms of this Conservation Easement by civil action, including the remedy of injunction, mandatory and prohibitory. The failure of the Grantee to discover a violation or to take immediate legal action shall not bar it from doing so at a later time.

(b) Grantee shall not bring any action against Grantor for any injury or change to the Easement Area resulting from causes beyond the Grantor's control, including, without limitation, fire, flood, storm and naturally caused earth movement, or from any prudent action taken in good faith by the Grantor under emergency conditions to prevent, abate, or mitigate significant injury to life, damage to the Easement Area or harm to the Easement Area resulting from such action.

8. **TRANSFER OF EASEMENT.** The parties recognize and agree that the benefits of this easement are in gross and assignable. The Grantee shall have the right to transfer or assign this Conservation Easement to any qualified organization that, at the time of transfer, is a "qualified organization" under Section 170(h) of the U.S. Internal Revenue Code and provided the organization expressly agrees to assume the responsibility imposed on the Grantee by this Conservation Easement. If the Grantee ever ceases to exist or no longer qualifies under Sec. 170(h) or applicable state law, a court with jurisdiction is hereby authorized to transfer this easement to another qualified organization having similar purposes that agrees to assume the responsibility.

9. **TRANSFER OF EASEMENT AREA.** Grantor shall notify Grantee, in writing, at least thirty (30) days prior to any conveyance by Grantor of the Easement Area or any interest in the Easement Area, and the document of conveyance shall expressly refer to this Conservation Easement and, by its terms, the conveyance shall be made subject to and subordinate to this Conservation Easement.

10. **AMENDMENT OF EASEMENT.** This easement may be amended only with the written consent of Grantor and Grantee. Any such amendment shall be consistent with the purposes of this Conservation Easement and shall comply with Sec. 170(h) of the Internal Revenue Code, or any regulations promulgated in accordance with that section. Any such amendment shall also be consistent with the Uniform Conservation and Historic Preservation Agreements Act, N.C. Gen. Stat. § 121-34 *et seq.*, or any regulations promulgated pursuant to that law. The Grantor and Grantee have no right or power to agree to any amendment that would affect the enforceability of this Conservation Easement.

11. **TERMINATION OF EASEMENT.** If it is determined by a court with jurisdiction that conditions on or surrounding the Easement Area have changed so much that it is impossible to fulfill the conservation purposes set forth above, a court with jurisdiction may, at the joint request of both the Grantor and Grantee, terminate this Conservation Easement.

If condemnation of a part of the Easement Area or of the entire Easement Area by public authority renders it impossible to fulfill any of the conservation purposes of this Conservation

Easement, this Conservation Easement may be terminated by a court with jurisdiction, provided Grantee is a party to any action to terminate this Conservation Easement.

At the time of the conveyance of this Conservation Easement to the Grantee, this Conservation Easement gives rise to a real easement right, immediately vested in the Grantee. If the easement is terminated and the Easement Area is sold or taken for public use, then, as required by Sec. 1.170A-14(g)(6) of the IRS regulations, the Grantee shall be entitled to a percentage of the gross sale proceeds or condemnation award (minus any amount attributed to new improvements made after the date of the conveyance, which amount shall be reserved to the Grantor), equal to the ratio of the appraised value of this easement to the unrestricted fair market value of the Easement Area, as these values are determined on the date of this Conservation Easement. The Grantee shall use any such proceeds consistently with the general conservation purposes of this Conservation Easement.

12. **INTERPRETATION.** This Conservation Easement shall be interpreted under the laws of North Carolina, resolving any ambiguities and questions of the validity of specific provisions as to give maximum effect to its conservation purposes.

13. **GRANTOR'S TITLE WARRANTY.** The Grantor warrants that it is the sole owner of and is seized of the Easement Area in fee simple and has good right to grant and convey this Conservation Easement; that the Easement Area is free and clear of any mortgages or other encumbrances not subordinated to this Conservation Easement, and that the Grantee shall have the use of and enjoy all the benefits derived from and arising out of this Conservation Easement, except for the following:

- (a) all enforceable easements and rights of way currently depicted in the Orange County Registry; and
- (b) Public Road rights of way affecting the Property; and
- (c) Riparian rights affecting the Property; and
- (d) The lien on the Property securing a \$600,000.00 private placement financing of the purchase of the Property in an amount not exceeding \$600,000.00.
- (e) A Conservation Easement granted to the State of North Carolina, acting through the North Carolina Clean Water Management Trust Fund, dated October 14, 2004 which Conservation Easement encumbers a 7.6 acre portion of the Property, said 7.6 acre portion being depicted on the Riparian Easement Plat, Adams Tract, 116 Watters Road, prepared by Philip Post & Associates and dated August 11, 2004, revised August 24, 2004, September 28, 2004 and October ___, 2004.

14. **NOTICES.** Any notices required by this Conservation Easement shall be in writing and shall be personally delivered or sent by first class mail, to Grantor and Grantee,

respectively, at the following addresses, unless a party has been notified by the other of a change of address.

To the Grantor:

Town Manager
Town of Carrboro
301 W. Main Street
Carrboro, NC 27510

To the Grantee:

Orange County Environment and
Resource Conservation Department
Orange County, North Carolina
P.O. Box 8181
Hillsborough, NC 27278

15. **ENVIRONMENTAL CONDITION.** The Grantor warrants that it has no actual knowledge of a release or threatened release of hazardous substances or wastes on the Easement Area, as such substances and wastes are defined by applicable federal and state law, and hereby promises to defend and indemnify Grantee against all litigation, claims, demands, penalties and damages, including reasonable attorneys' fees, arising from or connected with any release of hazardous waste caused by the intentional or negligent act of the Grantor or violation of federal, state or local environmental laws. Without limiting the generality of the foregoing, nothing in this Easement shall be construed as giving rise to any right or ability in Grantee, nor shall Grantee have any right or ability, to exercise physical or managerial control over the day-to-day operations of the Property, or otherwise to become an operator with respect to the Property within the meaning of The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended.

16. **SEVERABILITY.** The Easement created by this Deed shall be a servitude running with the land in perpetuity. Every provision of this Deed that applies to the Grantor or the Grantee shall also apply to their respective agents, heirs, executors, administrators, assigns, and all other successors as their interests may appear. Invalidity of any of the covenants, terms or conditions of this Easement, or any part thereof by court order or judgment shall in no way, affect the validity of any of the other provisions hereof which shall remain in full force and effect.

17. **PARTIES.** Every provision of this Conservation Easement that applies to the Grantor or Grantee shall also apply to their respective heirs, executors, administrators, assigns, and all other successors as their interest may appear. This Conservation Easement shall not be construed to benefit or to create any rights in any third parties, including but not limited to the general public.

18. **RE-RECORDING.** If necessary to and in order to ensure the perpetual enforceability of this Conservation Easement, the Grantee is authorized to re-record this instrument or any other appropriate notice or instrument.

19. **MERGER.** The parties agree that the terms of this Conservation Easement shall survive any merger of the fee and easement interest in the Easement Area.

20. **SUBSEQUENT LIENS ON EASEMENT AREA.** No provisions of this Conservation Easement should be construed as impairing the ability of Grantor to use the Easement Area as collateral for subsequent borrowing, provided that any mortgage or lien arising from such a borrowing is made subordinate to this Conservation Easement.

21. **EXHIBITS AND DOCUMENTATION.**

- (a) Legal Description. Exhibit A, Legal Description of the protected Property is attached hereto and made a part hereof by reference.
- (b) Documentation Report. The parties acknowledge that the Orange County GIS map and sketch of the Easement Area, Exhibit B hereto, accurately establishes the uses, permitted improvements, conservation values and condition of the Easement Area as of the date hereof.

22. **ENTIRE AGREEMENT.** This instrument sets forth the entire agreement of the parties with respect to the Conservation Easement and supersedes all prior discussions, negotiations, understandings or agreements relating to the Conservation Easement. If any provision is found to be invalid, the remainder of the provisions of this Conservation Easement, and the application of such provision to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

23. **ACCEPTANCE AND EFFECTIVE DATE.** As attested by the Clerk of the Grantee and the signature of its authorized representative affixed hereto, the Grantee hereby accepts without reservation the rights and responsibilities conveyed by this Conservation Easement. This Conservation Easement is to be effective the date recorded in the Orange County Registry of Deeds.

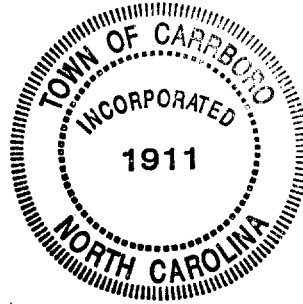
24. **ATTORNEY'S FEES.** In connection with any litigation arising out of this Conservation Easement the prevailing party shall be entitled to recover from the other party all costs incurred by it, including reasonable attorneys' fees, which shall include costs and attorneys' fees on appeal.

TO HAVE AND TO HOLD, this Grant of Conservation Easement unto the said Grantee, its successors and assigns, forever.

IN WITNESS WHEREOF, the Grantor and Grantee, intending to legally bind themselves, have set their hands on the date first written above.

GRANTOR:
TOWN OF CARRBORO, NORTH CAROLINA

By : Steven E. Stewart
Steven E. Stewart, Town Manager



ATTEST: Sarah C. Williamson

Printed Name: Sarah C. Williamson
Title: Town Clerk

Accepted:

GRANTEE:

ORANGE COUNTY, NORTH CAROLINA

By: Margaret W. Brown
Margaret W. Brown, Vice-Chair
Orange County Board of Commissioners

ATTEST:

Donna S. Baker
Donna S. Baker, Clerk to the
Board of Commissioners



Acknowledgments

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

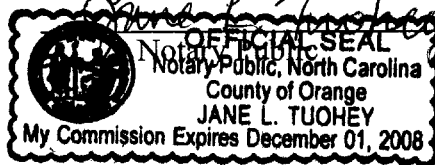
I, Jane L. Tuohey, a Notary Public for said County and State, certify that Steven E. Stewart and Sarah C. Williamson personally came before me this day and acknowledged that they are the Town Manager and Town Clerk, respectively, of the Town of Carrboro, North Carolina, and that by authority duly given and as the act of the Town of Carrboro, North Carolina, the foregoing instrument was signed in the Town's name by such Town Manager and attested by such Clerk.

WITNESS my hand and notarial seal, this 13 day of October, 2004.

Jane L. Tuohey

Jane L. Tuohey

My commission expires:
12-01-2008



(Notary Seal)

STATE OF NORTH CAROLINA
COUNTY OF ORANGE

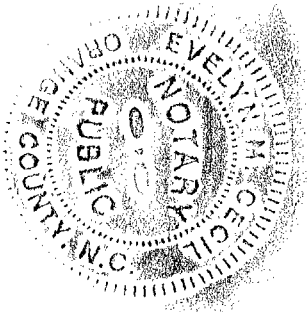
I, Evelyn M Cecil, a Notary Public of the County and State aforesaid, certify that Donna S. Baker personally came before me this day and acknowledged that she is Clerk to the Board of Commissioners for Orange County, North Carolina and that by authority duly given and as the act of said County, the foregoing instrument was signed in its name by the Vice-Chair of said Board of Commissioners and attested by her as Clerk to said Board of Commissioners.

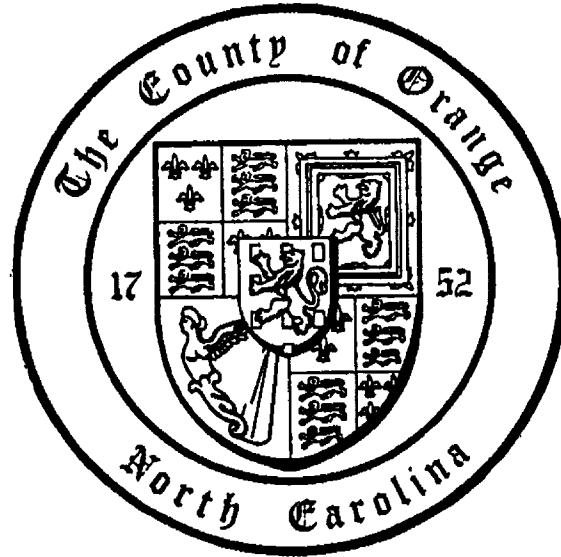
Witness my hand and official stamp or seal, this the 13 day of October, 2004.

Evelyn M Cecil
Notary Public

My commission expires:

10-13-2009





Joyce H. Pearson
Register of Deeds
Orange County
North Carolina

State of North Carolina, County of Orange

The foregoing certificate(s) of EVELYN M. CECIL, NOTARY PUBLIC, JANE L. TUOHEY, NOTARY PUBLIC for the Designated Governmental units is/are certified to be correct. See filing certificate herein.

This day October 15, 2004.

Joyce H. Pearson, Register of Deeds

BY: 

Deputy / ~~Assistant~~ Register of Deeds

Exhibit A

PROPERTY DESCRIPTION

Lying and being in the Town of Carrboro, Orange County, North Carolina, and being particularly described as being Tract 1, containing 27.286 acres, more or less, as shown on the plat of property titled "MINOR SUBDIVISION PLAT, Adams Tract, 116 Watters Road," prepared by Philip Post & Associates, which plat is recorded at Plat Book 96, Page 38, Orange County Registry (PIN 9779-80-2808). The property includes the improvements that are described in Exhibit B, attached hereto and incorporated herein.

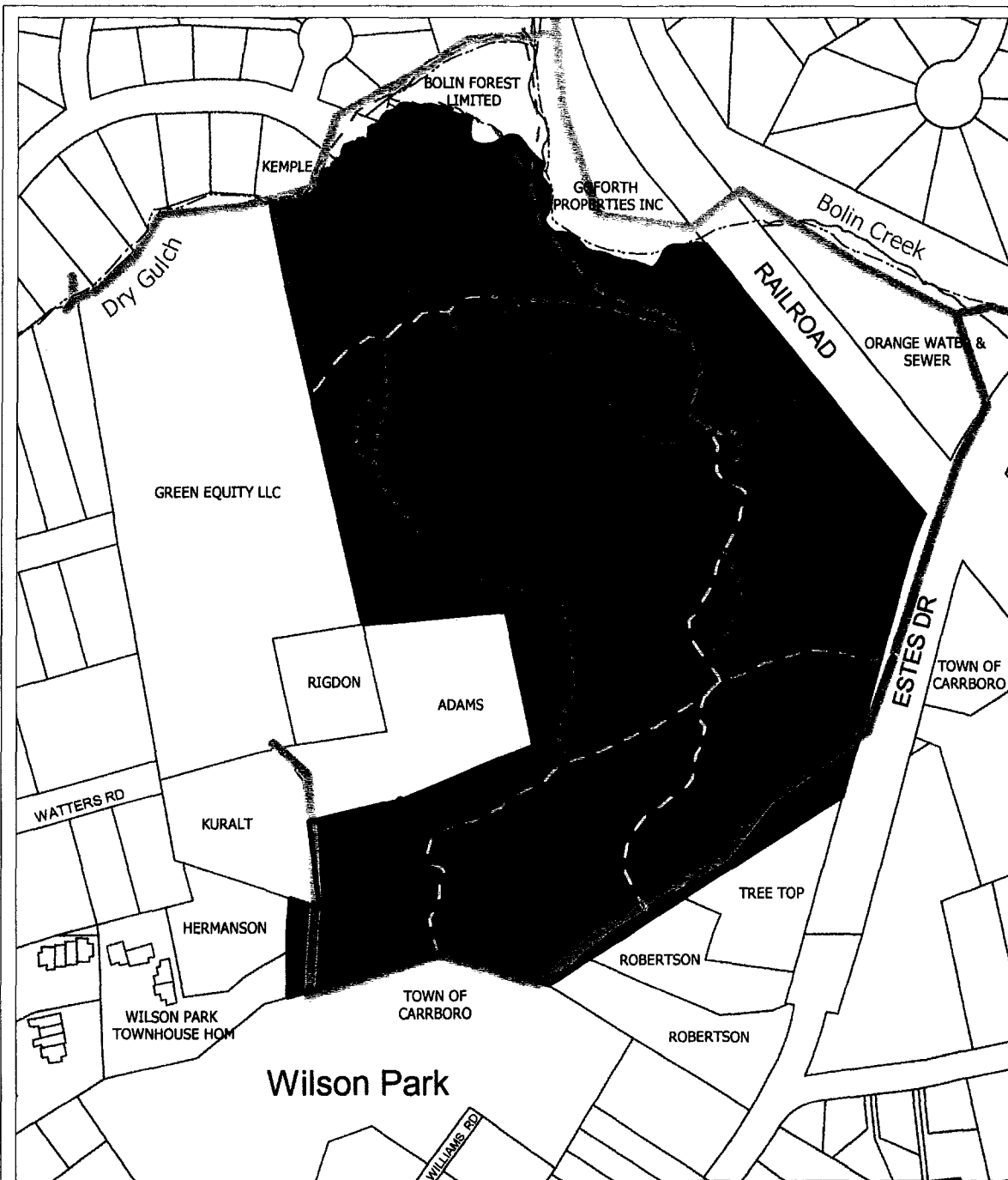


Exhibit B
 Town of Carrboro Conservation Easement
 Adams Tract (27.286 acres)

Town of Carrboro (Adams Tract)	Existing and Future Bike and Walking Trail	 30 0 30 60 Feet
Streams	Sewer Line	
Existing Trails to be abandoned	Parcel Boundary	County of Orange Environment & Resource Conservation Department M Jones 8/26/04
Existing and Future Walking Trails	Pine Dominated Forest	
Proposed Future Walking Trails & Interpretive Loops	Mixed Hardwood Forest	

**THIS MAP IS NOT A CERTIFIED SURVEY
 AND HAS NOT BEEN REVIEWED BY A
 LOCAL GOVERNMENT AGENCY FOR
 COMPLIANCE WITH ANY APPLICABLE
 LAND DEVELOPMENT REGULATIONS.**

Appendix VII – Wilson Park Urban Forestry Plan

(NOT INCLUDING APPENDICES)

WILSON PARK

URBAN FORESTRY PLAN



CREATED FOR:

TOWN OF CARRBORO

CREATED BY:

THE NORTH CAROLINA DIVISION OF FOREST RESOURCES

DATE:

05 APRIL 2005



Table of Contents

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Area Descriptions	4
Trails	6
Streams	8
Firewise	9

Appendices

- Appendix 1: NCDFR Forest Stewardship Program, NCDFR Tree Seedling Program
- Appendix 2: Invasive Species Management Information, Southern Pine Beetle Information
- Appendix 3: Wildlife Use of Common Native Trees and Shrubs, Snags (Wildlife Trees), Wildlife Resources Commission, Managing Edges for Wildlife, Woodland Wildlife Nest Boxes, Songbirds, Low Cost Habitat Improvements
- Appendix 4: Native Plants with Color, Native Wood Species, Native Plants of NC
- Appendix 5: Urban and Community Grant Program, EPA Targeted Watershed Grant Program, Patagonia Enviro Action, Invasivespecies.gov, Nonpoint Source Management Program: Section 319 NPS Grant Program
- Appendix 6: State Trails Program, American Hiking Society, Recreational Forest Trails: Plan for Success
- Appendix 7: Streamside Management Zones, A Citizen's Streambank Restoration Handbook information, Riparian Buffer Management, Useful Websites for Stream and Wetland Restoration, Help Prevent Erosion
- Appendix 8: Firewise

Introduction:

A 27-acre property adjacent to Wilson Park, recently purchased by the town of Carrboro, presents an opportunity to expand recreational opportunities as well as responsibly manage a valuable greenspace in the midst of a rapidly growing community. For the purposes of this report the property has been divided into three (3) primary management areas; a mature pine forest, a younger pine forest, and a mixed hardwood/riparian forest. The areas are connected by a basic trail system leading from the Wilson Park parking lot north to Bolin Creek and west to Estes Drive. Adjacent properties are mainly private subdivisions that currently have informal trails connecting to the park. The trail system is divided into three distinct trails (see map) with Trail 1 starting behind the playground and following the old road, Trail 2 following the sewer easement, and Trail 3 splitting off of Trail 2 about 120 feet into the woods.

The purpose of this report is to identify areas of interest on the property and to make suggestions for management and activities. Each management area will be described regarding its current condition followed by recommendations for management.

The overall objectives are:

- Enhance the newly acquired wooded area through restoration
- Offer additional opportunities for education and recreation
- Improve the overall aesthetic value of the property.
- Restore and protect Bolin Creek and its bordering trail
- Develop a long-term forest management plan
- Remove of any safety issues caused by dead or decaying trees.
- Develop a forest stewardship plan with the hopes of connecting the parks' trail system with the Orange County Greenway.

The history of this stand can be seen in the growth rings of the towering loblollies, as well as the development around the tract. According to DFR county records, the parcel had been under active forest management since 1981 when Forest Service Forester, James Ellis, wrote the first management plan for the Adams family.

The fact that there is an undeveloped area of this size close to the cities of Carrboro/Chapel Hill is very unique. As the population grows and urban spread increases, the demand for recreational space will also increase. Planning carefully to retain greenspace and recreational opportunities is essential. Increased usage as the park is developed will have a significant impact, leading to increased degradation and erosion of the trails and streams. For most of the area, there are no states-sponsored funding opportunities for carrying out forestry work. However, you may wish to consider creating a *Stewardship Demonstration Forest*, which would be eligible for technical assistance as well as signage and other project materials (Appendix 1).

Area Descriptions:

The areas described are designated on the aerial photograph.

Area 1:

This 12.6-acre pine stand is adjacent to Wilson Park and comprises a majority of the property. The area consists of a loblolly pine overstory with a mixed hardwood understory. Understory species include American beech, red maple, sweetgum, Eastern red cedar, dogwood, and American holly. The soil type is consistent with a silt loam and has a 4-10% slope. This stand is approximately 67 years old with a diameter range of 12-20 inches. The average height of the overstory trees is around 90 feet. The trees show no signs of disease or recent forest pest activity.



Loblolly pine generally reaches maturity between the ages of 45-55 depending on the site characteristics. This does not mean that the stand is in immediate danger of decline, but it should be monitored. Declining mature pine stands have an increased likelihood of Southern Pine Beetle infestation (Appendix 2). Symptoms of decline include needle discoloration, increased pest activity, fungal fruiting structures or premature needle drop.

Although timber management is not a desired objective, the possibility of creating one or two wildlife plots should be considered. Cutting one or two half-acre plots in an irregular shape creates an edge effect, ideal for many different wildlife species. This cutting regime would also address concerns of future decline, allowing openings for natural regeneration. The plots could further be planted with trees and shrubs for wildlife (Appendix 3). Educational signs could also be added to the trail at points of interest identifying the different kinds of wildlife that might be observed (Appendix 4). Specific projects such as wildlife observations and ecology learning stations may be suitable for grants issued by the Urban & Community Forest Grant Program (Appendix 5).

When brush or unmerchantable trees are cut, some of the materials should be retained on site. Larger tree trunks can be bucked and left onsite to decay and the branches can be used to create small piles that can be used for cover by wildlife.

Area 2:

This is a 7.8-acre pine stand with a history of timber harvesting. This stand was harvested approximately 40 years ago, and then left to regenerate naturally. These naturally regenerated trees were never thinned and have developed into a somewhat crowded pine stand. However, competition for nutrients and light has allowed dominant trees to persist while suppressed trees have died out. The current stand condition is composed of loblolly pine with sweetgum, red cedar, Virginia pine and dogwood. The soil and slope characteristics are identical to Area 1. Some ice storm damage is evident but minimal and should only be considered a concern around the trails that exist throughout the stand.

The area is infested with exotic, invasive species, which is a common problem in Orange County and throughout the state. Once exotic invasive species become established they can out-compete native species which are essential to maintain local ecosystem diversity (Appendix 4). Controlling exotic, invasive species is difficult and may take repeat efforts, but elimination of these species is necessary for the establishment of native forest communities. Prescriptions for Autumn Olive and Chinese Privet are attached within Appendix 2. If you should have any questions about a herbicide application please contact the Orange County office.

Area 3:

This is a 6.7-acre mixed hardwood stand with an overstory consisting primarily of post oak, white oak, red oak, black gum, yellow poplar and sourwood. Understory species include maple, ironwood, and dogwood. The soil type is consistent with the pine stand, a silt loam, with 10-18 % slope. This stand is approximately 67 years old. The trees seem to be vigorous and growing well.



It is important to recognize the riparian area, which abuts Bolin Creek. Protecting the integrity of the secondary waterways in the Cape Fear Watershed should be a top priority when considering any active management in and around this area. This area is ideal for both habitat and wildlife protection.

Sooty mold was found on many beech trees along the creek in this area (Appendix 2). The sooty mold grows on the excrement of past insect populations feeding on the bark and leaves of the



trees. The mold does not cause any direct injury to the trees because it never penetrates the leaf or bark tissue. However, it can stress infected trees by interfering with photosynthetic processes. It is recommended that dead and dying branches on infected trees be pruned to stop infection by secondary pathogens.

Trails:

The desired use for this area is an educational trail system and an eventual connection with the Orange County Greenway System. The current trail system has numerous safety issues associated with potentially hazardous trees. The removal of any dead and poor condition trees within a tree length of the trail is recommended to reduce potential danger for hikers. A possible exception involves leaving a few dead trees, called snags, in place in order to create habitat for various wildlife (Appendix 3). The stems that are removed should be bucked and left on site in small piles to create cover for small wildlife.

It is necessary to prune any dead limbs hanging over the trail could potentially fail and cause damage or injury. Once the hazards have been removed, the area should be monitored for potential hazards, particularly after a storm event.

Currently, heavy vegetation limits the field of view and trail access, which requires any restoration efforts to pay careful attention to the eradication of invasive species (Appendix 2). The addition of a sign at the trailhead with trail map and trail distances is suggested.

It is desirable to eliminate the use of this trail by bikes, especially on the back portion along Bolin Creek, but without regular enforcement this would be unlikely. An alternative course of action might be to create a separate trail to keep bikes off the lower portion of the trail, thereby reducing the amount of erosion. Partnering with a local bike club for trail maintenance in exchange for usage can be an excellent way to educate users and encourage responsibility.

Adding a few shorter loops at the beginning of Trail 1 and Trail 3 would provide short trail alternatives that could increase the use of the trail system. Adding signs along the trails that point out interesting habitat types (both tree and wildlife) would be educational to hikers.

Trail 1: This trail is an old roadbed or driveway beginning behind the playground and continuing to Estes Drive. While it shows the effects of high pedestrian use, the trail itself is in overall good condition, but with some potentially hazardous trees along the edge.



There is an unofficial parking lot at the eastern end of this trail with high traffic use. This can be addressed by 1) closing the lot and abandoning this portion of the trail, which will require proper signage stating restoration efforts are in progress or 2) creating a proper parking lot to allow vehicles to safely enter and exit Estes Drive.



Trail 2: This trail follows the sewer easement along the edge of the property from Wilson Park to Estes Drive and has a perennial stream on the south side. Due to the width of the easement, this trail is ideal for a demonstration area, with signage and native plantings, to educate the public on the importance of urban green space. The use of native flowering plants would be an ideal way to develop the easily accessible and handicap friendly trail section (Appendix 3).

Trail 3: The beginning section of this trail is overgrown with many hazardous trees. The dense understory of vines and saplings should be thinned to increase visibility and reduce potential hazards. The use of native species with flowers or fall color could be planted to create a more attractive hiking experience (Appendix 3). There is a small ephemeral stream at the intersection of Trail 1 and Trail 3, which requires proper stream crossing management (Appendix 6).



The contour of the terrain gets steeper closer to Bolin Creek, showing increased amounts of erosion. One section, before the downhill slope to the creek, is wet and it is recommended that this be addressed by redirection or by adding a structure such as stones, wood, or a footbridge.

Creating an additional trail loop on the uphill portion of this area should be considered. This would allow for a lookout point over the creek as well as give hikers an alternative to the steep terrain down to the water. To create a proper lookout it may be necessary to remove/thin some of the understory trees to improve visibility. This is an excellent opportunity to engage local





neighborhood residents in trail creation and maintenance. The more residents involved, the more likely the area will be used and maintained properly. Involving neighborhoods in such projects is an important element in Urban & Community Forest Grant awards.

The portion of Trail 3 with the steep grade down to the creek is in need of some type of stairs or other erosion control. As more people begin using the trail, erosion problems will only increase, therefore this requires immediate planning and action.

We recommend future trail design take into consideration paths that hikers are currently using and alter them to reduce any negative impacts. Some examples of this include adding wood chips to the trail, redirecting the trail to follow the contour, planting native vegetation along trails and stream banks, or using planted vegetation along the trails to direct users in the desired directions. Assistance with components of trail design is available through the *Urban & Community Forestry Grant Program*. Other informational and funding support opportunities are available through the *State Trails Programs* with the NC Division of Parks and Recreation (Appendix 6).

Streams:

The stream at the front of the property along Trail 2 is currently overloaded with downed trees and debris, which slows or stops the flow of water (Appendix 7). The stream has very little vegetation along the sides leading to increased erosion during a rain event. Water quality protection, restoration



and education projects are supported by Federal Grants through the Environmental Protection Agency (EPA) and the NC Division of Water Quality (Appendix 5). There is opportunity for community volunteer involvement in planting appropriate vegetation along the bank. The area is large and open enough to offer an excellent opportunity for use

as a demonstration area, educating the public on water quality issues and streamside management zones (SMZs) (Appendix 7).

Along the creek there are many areas that hikers use to cross or access large boulders along the creek edge. The stream bank itself is unstable and in need of proper stabilization (such as wetland herbaceous species, shrubs and trees). Ideally, the trail should be relocated away from the creek edge, but given the current rate of use, this would be difficult to enforce. Instead, it is recommended to minimize human impact on the stream by increasing vegetation along the bank and creating more defined stream crossings. The creek banks at user created crossings currently have heavy erosion and soil compaction problems. Planting herbaceous plants along the stream edge would reduce the amount of erosion while also allowing you to direct hikers to specific stream crossings and rock lookouts.

Firewise:

Regardless of the actions you decide to take on this property, minimizing the risk of fire is one important consideration that cannot be overlooked. The close proximity of surrounding neighborhoods and apartment communities makes this property easily accessible, creating increased fire risk. And, once the trails are established, that accessibility will increase.

Proper steps need to be taken to reduce the risk of fire. The management and eradication of invasive species in the understory will contribute to minimizing the risk and spread of fire. The Division of Forest Resources will be helpful in assessing and addressing this issue (Appendix 8).



Town of Carrboro
Public Works Department

memorandum

To: Adams Tract Management Plan Work Group

From: George Seiz, Director of Public Works
Anita Jones-McNair, Recreation & Parks Director

Re: Adam's Tract - Plan of Action for developing a Management Plan

Date: August 25, 2005

Accompanying the outline is a time table for implementation including estimated staff hours and staff assignments. Also attached is an "Outcome Line" to further explain the "Plan of Action".

Plan of Action

I. Formation of Management Plan Work Group - *Completed, July 2005*

Provides base of representation for stakeholders

II. Purpose Statement -

The purpose of this work group is to assist in the development of recommendations for the Adams Tract Land Management Plan draft. The management plan will serve as a guide to protect and to manage the Adams Tract to ensure its long-term vitality as an open space dedicated to passive recreation. The plan's main objective will be to provide a blueprint to improve the overall aesthetic value, health, and safety of the property through preservation, restoration, and trail improvement. Main components of the plan will include action steps to:

- Protect Bolin Creek and restore the creek banks
- Define trail improvements
- Establish a forestry management plan
- Create forest stewardship opportunities
- Provide costs and funding sources for the Land Management Plan

III. Recreation & Parks Master Plan Implications (Recreation & Parks)

- A. Review of Master Plan and discuss with consultant if necessary.
- B. Incorporate relevant information from Master Plan into management plan.

IV. Clean Water Management Trust Fund Implications (Manager's Office)

- A. Review CWMTF agreement, State and Orange County Easements. Identify covenants, restrictions, and requirements.
- B. Incorporate relevant items into management plan.



- V. **North Carolina Division of Forest Resource's Wilson Park Urban Forestry Plan, April 5, 2005** *(Public Works, Recreation and Parks)*
 - A. Select and prioritize management and activity suggestions provided by the NC Division of Forest Resources.
 - 1. Management areas
 - 2. Trails
 - 3. Streams
 - 4. Risk Management
 - B. Assign estimated costs to items identified in A above.
 - C. Determine budget impacts (immediate and future)
 - D. Phase/Plan any improvements - possible additions to CIP

This will be the foundation of the Town's Management Plan.

- VI. **On Going Maintenance** *(Public Works, Recreation and Parks)*
 - A. Identify routine and preventative maintenance for property.
 - B. Assign estimated costs to items identified in A above.
 - C. Determine budget impacts.

- VII. **Grant Funding** *(Recreation and Parks, Manager's office, Planning)*
 - A. Determine Grant Funding needs/desires based on items V & VI above.
 - B. Identify potential grant funds utilizing suggestions provided in Wilson Park Urban Forestry Plan. Utilize other resources as well.

- VIII. **Draft Management Plan** *(Recreation and Parks, Public Works, Manager's Office)*

Create draft management plan document incorporating information gathered from Items I thru VII above.

General Outline of Management Plan

 - 1. Introduction (planning process)
 - 2. Purpose
 - 3. Park Description and Significance
 - 4. Management Plan
 - 5. Implementation

- IX. **Review and comment on draft Management Plan**
 - A. Review by Adams Tract Management work Group, town staff, Board of Aldermen.
 - B. Modify plan as needed.

- X. **Final Plan - Adams Tract Management Plan**

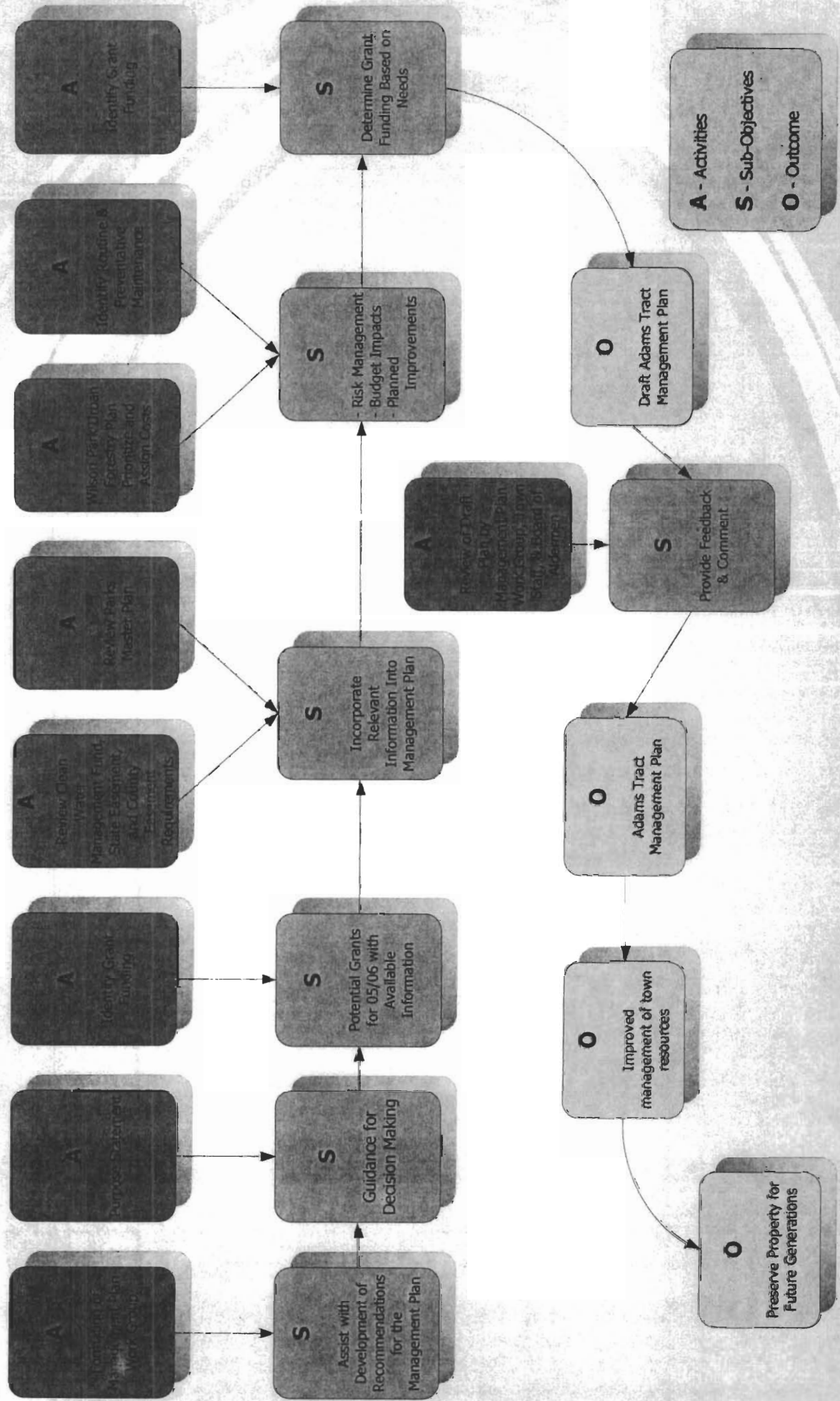


Town of Carrboro
Public Works Department

memorandum

Outcome Line - Adams Tract Management Plan Development

Monday, August 29, 2005



Adams Tract Management Plan Work Group

Initial meeting with Town staff to discuss development of a management plan for the Adams Tract

Date of Meeting: September 14, 2005

Time: 7:00 pm

Location: Century Center, Rm 2 & Rm 3

AGENDA

1. Introductions - George Seiz, Director of Public Works
2. Historical/Background information on Adams Tract - Anita Jones-McNair, Recreation and Parks Director
3. Clean Water Management Trust Fund, State Easement and Orange County Easement - Richard White, Assistant to the Town Manager
4. Review "Plan of Action" for Development of Management Plan - George Seiz
5. Questions. What's next



Town of Carrboro
Public Works Department

memorandum

To: Adams Tract Management Plan Work Group

From: George Seiz, Director of Public Works
Anita Jones-McNair, Recreation and Parks Director

Cc:

Re: Management Plan update

Date: September 27, 2005

The Town of Carrboro greatly appreciates all of you who are participating in the development of the management plan for this unique piece of property. Several good ideas were exchanged at the meeting on September 14. Suggestions included the following:

1. Possible funds thru RTP
2. Adopt-A-Trail program
3. An accessible loop - possible grant funding available
4. Organizing an AmeriCorps event
5. Incorporation of bike trails within the property
6. Name change for property
7. Trail walk in near future for Work Group members.

Town staff will be investigating some of these issues during the development of the management plan.

The possibility of incorporating bike trails as part of the management plan received considerable discussion and concerns were expressed based on restrictions stipulated by the State and County easements. Town staff expressed caution and the need for a closer review of both easements. Town staff has completed these reviews and has determined the following:

The State's easement is very specific about restrictions on biking. The last sentence on page 5 of the State's conservation Easement reads as follows:

"Notwithstanding any language to the contrary in this Conservation Easement, Grantor shall not allow use of greenway trails or any portion of the easement area for biking or by all-terrain vehicles."

Although the County's easement does not specifically mention a restriction on biking, it does include an Exhibit "B" which shows a future bike trail following a sewer easement. Part of this sewer easement is within the Adams Tract and part is within the Estes Drive right-of way. Section 21 of the County Easement refers to Exhibits and Documentation. Section 21 (b) reads as follows:

"Documentation Report. The parties acknowledge that the Orange County GIS map and sketch of the Easement Area, Exhibit B hereto, accurately establishes the uses, permitted improvements, conservation values and condition of the Easement Area as of the date hereof."



Town of Carrboro
Public Works Department

memorandum

Based on the above language, the Town concludes that the State Conservation Easement prohibits biking within the State easement area and the County Conservation Easement limits biking to the OWASA easement.

It is hoped that all groups and individuals interested in the Adams Tract will continue to contribute their knowledge and expertise to ensure the long-term vitality of this open space.

At the September 14 meeting, Rich Shaw proposed having a trail walk for work group members. October 5, 2005 was the suggested date, and after some discussion it was understood that some members may not make that date. Hopefully, there will be a good number of folks "trail walking" on October 5 at 5:00 pm.

Adams Tract Management Plan Work Group – 5/10/06 Meeting Notes

I. Attendance

- Members Randee Haven-O'Donnell (Alderman), Salli Benedict (Friends of Bolin Creek), Kokeita Miller (Rec.& Parks Facilities Administrator), Anita Jones-McNair (Rec&Parks Dir.), Drew Cummings (Asst. to the Town Mgr.), George Seiz (Pub. Wks. Dir.), Stephen Peck (O. Cty. Rec & Parks Adv. Council), Stewart Bryan (TORC – Triangle Off-Road Cyclists), and Rich Shaw (O. Cty. Land Cons. Mgr.) were in attendance.
- Non-members Cliff and Linda Haac from the Bolin Forest Phase II HOA were also in attendance.
- Members Diana McDuffee, John Herrera, Doris Murrell, and Marianne Nicholson were not in attendance.

II. Agenda

- A. INTRO. (10 min.)
- B. BRIEF OVERVIEW OF DRAFT DOCUMENT FOLLOWED BY DISCUSSION (45 min.)
- C. DISCUSSION OF GREENWAYS AND OPEN SPACE AND PRESERVE COMMISSION PROPOSAL (at the request of the Board of Alderman) (15 min.)

III. Discussion of Draft Adams Tract Management Plan

a. Bicycles:

- It was agreed that the current easements do not allow bicycles anywhere on the Adams Tract except along the OWASA easement running from Wilson Park to Estes Dr. Ext.
- Stewart Bryan (TORC), Salli Benedict (FOBC), and Stephen Peck (O. Cty. Rec. & Pks. Council) seemed, on behalf of their organizations, interested in modifying the complete ban on bicycles, and a number of group members agreed that, given current usage patterns, a complete ban would probably not work in practice anyway.
- Stewart Bryan (TORC) ventured that attempting to change the state easement now would be easier than trying to do it later.
- Rich Shaw said that Orange County and Carrboro, if they were in agreement on the question, could enter into a legal process whereby the conditions of the easement might be changed.
- Randee Haven-O'Donnell made a point that she believed the Town should consider where it *can* allow mountain biking. A few others agreed. Anita Jones-McNair noted that this need might be addressed more fully in the Recreation and Parks Master Plan, and Drew Cummings noted that part of solving this problem might involve further land purchases. Twin Creeks was discussed as a possibility, though its distance from downtown was brought up as a barrier to use by some downtown residents.
- There was discussion of the way bike trails have been integrated into 140 acres of the Little River Regional Park, though it may be important to note that this is not an urban park and roughly 7 times the portion of the Adams Tract that could possibly be opened to bicyclists.

b. Bridges / Access to Future Bolin Creek Greenway:

- Barring a railroad crossing on or next to Estes Drive Ext., a bridge across Bolin Creek will be the only way users of the Adams Tract can now or in the future access the trail systems on the far side (without going *through* the stream and negatively impacting water quality). Those trail systems will eventually include greenway trails stretching from Twin Creeks Park to downtown Chapel Hill and beyond, so planning for access via Wilson Park / the Adams Tract / Carrboro will be crucial.
- Town staff mentioned that, in discussions with Chapel Hill staff, at least one of Carrboro's access points to the Bolin Creek Greenway will be off of Estes Drive Ext. near the railroad tracks (going down to the OWASA easement).
- For the smaller bridge proposed for Dry Gulch, the Bolin Forest HOA and a local Boy Scout troop have already volunteered their services to help with construction.

c. Volunteer Labor:

- There appear to be numerous pools of volunteer labor available for work on the Adams Tract, especially as relates to trail work and the small bridge over Dry Gulch. HOA groups (specifically, Cliff Haac volunteered the labor of the Bolin Forest Phase II HOA folks), other homeowners near the tract, bicycle groups, Boy Scouts, Americorps Conservation Corps, and homeless or unemployed folks through a WPA-like program offering stipends were mentioned in particular.
- Town staff also offered the idea that to the extent that volunteer labor (and grant or other non-Town funding) can be utilized, the scope of improvements which can be done in the Adams Tract may well expand.

d. Trespassing issue:

- Private property owners in Bolin Forest Phase II HOA are concerned that people intent on using the Adams Tract or other open space in the area are trespassing on private property as they access the Bolin Creek Area via the steps at the end of Bolin Forest Drive or come down the OWASA easement along the northern edge of the Pacifica development. It was generally agreed that the Town can help this situation by creating and encouraging the use of legitimate entrances to the Adams Tract.
- The Bolin Forest Phase II HOA also requested that the Town remove trails over private property from maps showing "existing or proposed trails" in the Adams Tract.

e. Posting and Enforcing Rules:

- Some Bolin Forest Phase II HOA homeowners are concerned with posting and enforcement of rules, particularly leash laws, in the Adams Tract (and beyond, though much of the "beyond" is in Chapel Hill's jurisdiction). They brought up the idea of an additional animal control officer or park ranger – type position.

IV. Discussion of the Greenways and Open Space and Preserve Commission Proposal

- a. Rich Shaw said that Orange County had created a new *department* to focus on issues of open space / land preservation and suggested that the many tasks outlined in Randee's proposal would require a new advisory board or a special committee of an existing board.

- b. Salli Benedict expressed interest in Jacquie Gist's idea of a one-day summit to gather thoughts about how to approach the issue of preserving greenways and open space and preserves. Salli and some others thought that current development proposals and planning efforts as well as general interest in the topics of greenways and open space means that this proposal should continue to be discussed and that there would probably be considerable interest from citizens interested in serving on this board.
- c. There was also discussion of perhaps collapsing some of the existing advisory bodies that deal solely with greenways / open space into this new commission if it is created.
- d. In an email, member Marianne Nicholson expressed some concern about creating yet another commission and also about separating greenways and open space from recreation and parks.

Note: Included on the following two pages are other reactions to the agenda / minutes from members of the Adams Tract Management Plan Work Group.

From: Marianne Nicholson [mamalama@bellsouth.net]
Sent: Wednesday, May 10, 2006 5:07 PM
To: Drew Cummings
Subject: RE: confirming next week's meeting (and one additional agenda item)

I regret I will not be able to attend this meeting. A situation has arisen at work that is demanding my time. Please keep me informed. I am leery of another "Commission" and am not sure how such would work with the various different governments (Chapel Hill, Carrboro, Orange County, etc.) If the discussion is of another Commission just for Carrboro apart of the Carrboro Recreation and Parks Commission, without hearing the pro arguments, I have concerns about separating greenways and open space from Recreation and Parks. Sorry I won't be able to attend.
Marianne Nicholson

From: Rich Shaw [RShaw@co.orange.nc.us]
Sent: Thursday, May 11, 2006 9:08 AM
To: Drew Cummings
Subject: Adams plan

Drew,

Good morning. Nice job on the Adams Tract management plan. Attached are a few minor editorial comments and suggestions for your consideration. I voiced a comment about managing the boundary trees, but after re-reading that section I see that you have already addressed that in the document.

If the Town wished to pursue an amendment to the conservation easement (which I'm not advocating), please refer to Paragraph 10 of the easement document for guidance. The site map referenced in the easement (Exhibit B) provides the most specific guidance as to where bike trails are permitted. The site map was developed by the Town's Adams Tract Preservation Committee. At that time, members of the bike community who were consulted agreed that abandoning the existing bike trails from Wilson Park to and across Bolin Creek was reasonable.

Thanks,
Rich

From: Salli Benedict [salli_benedict@unc.edu]
Sent: Wednesday, May 17, 2006 3:59 PM
To: Drew Cummings
Cc: Anita Jones-McNair; Diana McDuffee; Doris Murrell; George E. Seiz; John Herrera; Marianne Nicholson; Randee Haven-O'Donnell; Rich Shaw; Stephen Peck; Stewart Bryan
Subject: Re: ahh yes, and the minutes:)

Hi everyone,

I have a couple of additions to the minutes:

III-c: I mentioned Americorps Conservation Corps volunteers. They do a lot of work on trails.

IV. My perception was that, at the end of the meeting, we agreed that a Greenways, Open Space and Preserve Commission is an idea that should continue to be discussed. Most of us were in favor of the idea. Several of us said that we thought there would be a lot of interest among Carrboro citizens in volunteering for this Commission, and that, at this time in particular, there is so much happening in this area that a new Commission is a good idea (i.e., Adams Preserve, Carolina North development and efforts to preserve the Bolin Creek corridor).

thanks!
Salli

From: Stewart Bryan [sponcon@mindspring.com]
Sent: Tuesday, May 16, 2006 9:28 AM
To: Drew Cummings
Cc: Anita Jones-McNair; Diana McDuffee; Doris Murrell; George E. Seiz; John Herrera; Marianne Nicholson; Rande Haven-O'Donnell; Rich Shaw; Salli Benedict; Stephen Peck
Subject: Re: proposed minutes of 5/10 work group meeting - please review and return any comments by this Wednesday pm

Drew,
 I think that one point needs to be emphasized about the bike trails in Adams Tract and I think it is what OC Parks and Rec, TORC and FOBC were all stressing last week. There needs to be a sustainably built route which is open to foot and bike traffic from Wilson Park to the proposed new bridge across Bolin Creek to tie into the future greenway which will travel to Twin Creeks. So far we have not identified an acceptable alternative which does not pass through the area of the state easement along the creek. The connection to the future larger system is what is important here, this tract is not big enough to consider as a ride destination on it's own but the loss of connectivity will be huge. Maybe I am naive but it seems to me that it is worth the effort to approach DENR and question the reasoning behind their insertion of the ban on "biking or all terrain vehicles". TORC believes their statewide bias against trail bicycling (as evidenced by only 2 small areas in their system) is not based in either science or in experience and they would not be able to explain their position with concrete evidence. If this exclusion of bikes could be amended then TORC could partner with any other volunteer groups and we would take the lead in design, construction and future maintenance of the trail. We are a 501(c)3 with the ability to write and administer grants with liability insurance and a large pool of trained trail builders. If this happens then all of the funds in the budget for trail work could be reallocated, perhaps towards the future bridge across Bolin Creek.

I understand that approaching the state is not a simple matter but I think in the long run it will be worth making the effort. Section 10.1 of the DENR contract appears to make provisions for modifications in the same way that the OC agreement does. I agree with Stephen that Adams Tract is a linchpin in a much larger future recreation picture. If you are closing the access on Estes Dr and through the private property near Dry Gulch then Wilson Park is Carrboro's main access to the greenway system. Not allowing bikes will severely reduce the value to your citizens. How many people are going to hike out to Twin Creeks?

Stewart

102 Millrock Court
Carrboro, NC 27510
February 6, 2006

Honorable Mayor and Aldermen
Town of Carrboro
120 West Main Street
Carrboro, NC 27510

Dear Mayor and Aldermen,

I am writing on behalf of Bolin Forest Phase II to ask for your attention and action related to areas of concern for our neighbors as you prepare budgets and action items for the coming year.

You may be aware that our neighborhood owns ~ 5 acres of land, our "common area", along Dry Gulch Creek and Bolin Creek. On the other side of Dry Gulch Creek is the new Pacifica development, slated for occupancy this summer, and the recently acquired Adam's Tract. Over the past few years, we have seen an exponential increase in the number of people and dogs using the trails and playground in our common area and the surrounding areas. As an example, one of our Board Members reported seeing about 35 people and a dozen dogs, some leashed, some not, in a span of less than an hour, on a Sunday evening (when pedestrian traffic is usually light), along a 300 foot stretch of Bolin Creek. We expect that the increase in pedestrian and bike traffic will continue to grow as Pacifica is completed, as the Adam's Tract is discovered by more people, and as more development occurs in Chapel Hill and Carrboro.

There are several additional issues that concern us.

- While 99% of the dog owners using our and the contiguous properties are responsible and concerned about the rights of others, 1% are not. We have posted our property reminding citizens of the Carrboro Leash Law and we have worked with the Carrboro Police and the Animal Control Officer to educate our citizens. Our neighbors are concerned about several news reports of dogs nipping children (and consequently these children requiring rabies inoculations), the reports of Raccoons with rabies and distemper, and generally encountering from one dog to a pack of dogs roaming the area and intimidating children and adults alike. We believe more needs to be done to educate our citizens, to patrol the area and to enforce the Leash Law. We believe you need to allocate funds for additional resources to be used for these purposes and to direct Animal Control to fine those not leashing their dogs.
- There are pedestrian easements along the creeks within our common area. However it is impossible to access the one along Dry Gulch Creek without crossing private property. We think a solution is to create an access to the Adam's Tract from the end of Bolin Creek Drive. The Town already owns this easement and is currently upgrading steps to Dry Gulch Creek. All that is needed is a short

pedestrian bridge across Dry Gulch Creek and marking an ecologically sound trail into the Adams Tract. We believe this requires immediate action before more people inundate our property and/or create their own trails to the Adam's Tract. We ask that you direct the Adams Tract Management Committee to work with us to implement both an interim solution and long-term plans.

- Ecological damage and erosion along the creeks is another concern. We maintain our property and a playground and have been glad to do it for the benefit of all. With the influx of more people more erosion has been occurring. Because we share a pedestrian easement with the Town along the creeks, we would like to work with Town staff to develop a plan for where pedestrian and bike traffic should be directed. I understand that many believe this traffic should be directed to the eastern side of Bolin Creek where OWSA has established a rudimentary roadbed. Doing so would seem to solve many of the ecological issues but it would also require a footbridge from the Adams Tract to the far side of Bolin Creek. This is another area where I would ask that you consider allocating funds and also directing the Adam's Tract Management Committee to work with our Home Owners Association for interim and long term solutions.

I would also like to note that our HOA has been proactive in dealing with all of these issues and we really would like to partner with the Town. We have both human resources and financial resources that we can bring. However it is only by working together that we can accomplish what I believe is a shared goal of creating a sustainable natural area for the enjoyment of all Carrboro citizens. I will look forward to hearing from you.

Sincerely

Cliff Haac
President, Bolin Forest Phase II HOA