

DEVELOPMENT AGREEMENT

BY AND BETWEEN

THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL

AND

THE TOWN OF CHAPEL HILL, NORTH CAROLINA

Dated as of _____, 2009

Note: This draft was prepared by the Town-University Joint Staff Work Group and is still undergoing detailed review and discussion by that group. This draft will be further revised to reflect discussions by the Town Council and University Board of Trustees, as well as on-going review and comment by citizens and Town and University staff. It is anticipated that a proposed development agreement will be submitted to the Town Council in March 2009 and formal review of the proposed agreement by Town advisory boards and the public will take place in April through June 2009.

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STATE OF NORTH CAROLINA

DEVELOPMENT AGREEMENT

COUNTY OF ORANGE

This Development Agreement (hereinafter the "Agreement") is made and entered into as of the ____ day of June 2009 (hereinafter the "Effective Date") by and between The **University of North Carolina at Chapel Hill** (hereinafter the "University"), a public entity authorized to conduct business in the State of North Carolina, and the **Town of Chapel Hill, North Carolina** (hereinafter the "Town"), a municipal corporation of the State of North Carolina.

ARTICLE 1. STATUTORY FRAMEWORK

- 1.1. North Carolina General Statutes (hereinafter "G.S.") 160A-400.20(a)(1) provides that "large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources."
- 1.2. G.S. 160A-400.20(a)(3) provides that "because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing, and construction schedules and the phasing of the private development."
- 1.3. G.S. 160A-400.20(a)(4) provides that "because of their scale and duration, such large-scale projects involve substantial commitments of private capital by developers, which developers are usually unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of development."
- 1.4. G.S. 160A-400.20(a)(5) provides that "because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing impacts on the surrounding areas."
- 1.5. G.S. 160A-400.20(a)(6) provides that "to better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments."
- 1.6. In view of the foregoing, G.S. 160A-400.20(b) and 160A-400.22 expressly authorize local governments and agencies to enter into development agreements with developers pursuant to the procedures and requirements of G.S. 160A-400.20 through 160A-400.32, which procedures and requirements include approval of the development agreement by the governing body of the local government by ordinance after a duly noticed public hearing.
- 1.7. G.S. 160A-400.23 restricts the use of a development agreement to "property that contains 25 acres or more of developable property (exclusive of wetlands, mandatory buffers, unbuildable slopes, and other portions of the property which may be precluded from development at the time of the application)." G.S. 160A-400.23 further provides that "development agreements shall be of a term specified in the agreement, provided they may not be for a term exceeding 20 years."

ARTICLE 2. DEFINITIONS

In the construction of this Agreement and its incorporated Exhibits, the following definitions and rules of construction shall be observed, unless inconsistent with the manifest intent of the parties or the context clearly requires otherwise. Except as otherwise provided in this Agreement, terms used in the relevant portions of the North Carolina General Statutes or the Town of Chapel Hill Land Use Management Ordinance shall have the same meanings as employed in those statutes and ordinances.

- 2.1. *Agreement.* The word "Agreement" shall mean this Development Agreement by and between the Town of Chapel Hill and the University of North Carolina at Chapel Hill.
- 2.2. *Carolina North.* The words "Carolina North" shall mean the mixed used campus proposed to be developed on the Horace Williams tract by the University of North Carolina at Chapel Hill.
- 2.3. *Council.* The word "Council" or "Town Council," shall mean the legislative body of the Town of Chapel Hill, which together with the mayor shall constitute the governing body of the town.
- 2.4. *Development.* The word "development" shall mean any activity involving, requiring, or consisting of the construction or enlargement of a building, structure, road, greenway, sidewalk, parking facility, or utility infrastructure or the clearing or alteration of land as an adjunct of construction.
[An alternative is to use the definition included in the development agreement statute:-
The word "development has the same meaning as provided in G.S. 160A-400.21(3). It includes: The planning for or carrying out of a building activity, the making of a material change in the use or appearance of any structure or property, or the dividing of land into two or more parcels.
"Development", as designated in a law or development permit, includes the planning for and all other activity customarily associated with it unless otherwise specified. When appropriate to the context, "development" refers to the planning for or the act of developing or to the result of development.
Reference to a specific operation is not intended to mean that the operation or activity, when part of other operations or activities, is not development. Reference to particular operations is not intended to limit the generality of this item.]
[Note: The breadth of the term "development" that will be subject to a development agreement and to land uses not involving a building is a key point of on-going discussion. The question of what it includes and where physically that definition applies will need to be addressed both in both the LUMO district text and the development agreement.]
- 2.5. *Effective Date.* The word "Effective Date" shall mean the effective date of this Agreement, which is _____, 2009.
- 2.6. *Horace Williams tract.* The words "Horace Williams tract" shall mean the approximately 947 acre parcel of land owned by the University of North Carolina at Chapel Hill as depicted in Exhibit A.
- 2.7. *LUMO.* The term "LUMO" shall mean the Land Use Management Ordinance of the Town of Chapel Hill in effect as of the effective date of this Agreement.
- 2.8. *Manager.* The words "Manager" or "Town Manager" shall mean the Town Manager of the Town of Chapel Hill.
- 2.9. *Nontechnical and technical words.* Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.
- 2.10. *Parties.* The words "Parties" shall mean the parties to this agreement, the Town of Chapel Hill and the University of North Carolina at Chapel Hill.
- 2.11. *Project.* The word "Project" means the Carolina North development subject to this development agreement.
- 2.12. *Town.* The words "the Town" or "this Town" shall mean the Town of Chapel Hill in the Counties of Orange and Durham and the State of North Carolina.
- 2.13. *University.* The words "the University" shall mean the University of North Carolina at Chapel Hill.

ARTICLE 3. RECITALS

- 3.1. The University is the owner of an approximately 947 acre parcel of land located on the north side of Estes Road Extension and the west side of Martin Luther King Boulevard (hereinafter referred to as the "Horace Williams Tract"). Approximately 643 acres of this parcel is located within the corporate and regulatory limits of the Town, which portion of that parcel of land is more particularly depicted on

Exhibit A attached hereto and incorporated herein by reference. Approximately 228 acres of this portion of the tract within the Town's planning and regulatory jurisdiction are included within the University's long-range development plan for academic, research, medical, cultural, and related functions with supporting housing, retail, office, recreation, and open space uses (hereinafter referred to as the 'Carolina North' project), which parcel of land is more particularly depicted on Exhibit B attached hereto and incorporated herein by reference. Within the Carolina North project, the University has developed more detailed plans for the development of a phase of the project that is covered by this Agreement, which parcel of land is more particularly depicted on Exhibit C attached hereto and incorporated herein by reference.

- 3.2. The core portion of the Horace Williams tract was acquired by the University in 1940 as a bequest from Professor Horace Williams. In the ensuing years the University acquired adjoining lands. Portions of the site have been used as an airport, landfill, Town operations center, animal shelter, and open space.
- 3.3. In the mid-1990s the University commissioned several studies and reports on the future use of the site, culminating in the September, 1998 report, "Outlying Parcels Land Use Plans: Summary Report." In 2001 the University, in consultation with University faculty, administrators, and members of the community, revised and updated the land use plans for this site, culminating in a February, 2001 land use plan for the Horace Williams tract.
- 3.4. The Town formed the Horace Williams Citizens Committee in 2003 to provide advice and recommendations regarding Town review of development proposals for this parcel and the Town Council adopted the March, 2004 final report of this Citizens Committee as Town policy.
- 3.5. In May, 2004 the University adopted a new Carolina North Conceptual Draft Master Plan.
- 3.6. In early 2006 the University formed a Leadership Advisory Committee with representation from the University, Town, other local governments, community groups, and the State of North Carolina to work towards consensus principles to guide planning for the Carolina North project. A final report of that Committee's work was issued on January 19, 2007.
- 3.7. As part of the process of then updating its plans for the Horace Williams tract, the University in 2006-07 conducted extensive studies of ecological conditions on site, utility and infrastructure needs, and sustainable design options. Four public and peer review sessions of the ecological analysis were held in November and December, 2006. The work led to the production of an Ecological Assessment Report for the Carolina North site in October, 2007.
- 3.8. In 2007 the University conducted a series of seven public workshops on plan alternatives for the Horace Williams tract. The University adopted an updated Carolina North Plan in September, 2007.
- 3.9. The Town Council and representatives of the University Board of Trustees held a work session on January 13, 2008 and agreed to work cooperatively towards design of a new Town development review process for the Carolina North project. Senior staff from the Town and University subsequently formed a Joint Staff Work Group that met regularly over the 2008-09 period to address the Carolina North development review process.
- 3.10. In June, 2008 the Town Council authorized the Town staff to develop a proposal for a new zoning district and a development agreement as the framework for the Town's review of Carolina North development proposals.
- 3.11. On September 25, 2008 the Town Council and representatives of the University Board of Trustees began a series of monthly work sessions to discuss the Carolina North project and the Town's development review process for the project. On October 15, 2008 the Town Council authorized staff to proceed with preparation of a new zoning district and potential development agreement for this project.
- 3.12. On October 31, 2008 the University submitted to the Town a request for a new zoning district for the portion of the Horace Williams tract within the Town jurisdiction, proposed use of a development agreement, and provided plans and background studies relative to use of the property. This submission included a Carolina North 50-year plan, planning overlays for the site, schematics and draft programs for early and mid stage development of the project, the Ecological Assessment Report (October, 2007), and draft Carolina North Design Guidelines (October 30, 2008).
- 3.13. The Town conducted public information sessions were held to advise and seek public input on the

proposed process and Carolina North project on November 19, 2008, January 29, 2009, February __, 2009, March __, 2009, and April __, 2009.

- 3.14. In February, 2009, the initial draft of a potential Land Use Management Ordinance (hereinafter "LUMO") text amendment and development agreement were presented to the Town Council and public for review and discussion.
- 3.15. On March __, 2009 a proposed Land Use Management Ordinance (hereinafter "LUMO") text amendment, zoning atlas amendment, and development agreement were presented to the Town Council. In April, 2009 Town advisory boards reviewed and prepared comments on the proposed amendments and development agreement. A public hearing was conducted by the Town Council on the proposed LUMO amendments and development agreement on May __, 2009.
- 3.16. The University has developed and approved a 50-year Carolina North development plan for approximately 250 acres of the Horace Williams tract. This plan focuses development on the previously disturbed areas of the Horace Williams tract, with development concentrated on approximately 228 acres. This development area is adjacent to the existing adjacent major road network. The long-range development plan anticipates some 8 to 9 million sq. ft. of floor space over a fifty year period. This plan is based on an extensive ecological assessment of the site, a detailed infrastructure analysis, and a series of public workshops. The University's Long-range Plan for Carolina North contemplated as of the Effective Date is set forth as Exhibit D attached hereto and incorporated herein by reference. The University also developed design guidelines for the Carolina North project, which are set forth as Exhibit E attached hereto and incorporated herein by reference.
- 3.17. The initial phase of the Carolina North project involves the construction of approximately 3 million sq. ft. of building space on approximately 133 acres over a twenty year period. This phase of the development proposed that the site's predominant uses be public or private development for college/university, research activity, civic, hospital, clinics, cultural, and/or related or support functions with integrated supporting housing, general business, convenience business, office-type business, recreation, utility and/or open space uses. The plan for this portion of the Carolina North project contemplated as of the Effective Date, which is the development subject to this Agreement, is set forth as Exhibit F attached hereto and incorporated herein by reference.
- 3.18. The purpose of this Agreement is to facilitate the implementation of the initial phase of the Carolina North project, thereby realizing the public benefits to the Town and the University described in this Agreement. The development of Carolina North requires a major investment by the University in public facilities, substantial front-end investment in on-site and off-site improvements, participation in other programs for public benefit and purposes and substantial commitments of the resources to achieve the benefits of the Project for the University and the Town. The University will be unable to make and realize the benefits from such commitments without the assurances of a realized Project as provided by this Agreement.
- 3.19. The general benefits to be received by the Town from the implementation of the Project include, without limitation:
 - a. Implementation of the Carolina North plan and furthering the goals of securing an appropriate mix of uses and densities on the site.
 - b. Protection of natural resources within of the Horace Williams tract beyond the area included within the development agreement, minimization of adverse off-site impacts, and incorporation of sustainability principles in the design and implementation of the Project.
 - c. Provision of an efficient, effective, and practical overall plan for addressing the transportation needs of the Project, including commitments to transit, bikeways, greenways, sidewalks, and road improvements.
 - d. Assurance that the Project will be undertaken in a manner that does not cause undue adverse fiscal impacts for the Town.
 - e. Establishment of integrated site plans, urban design elements, land uses, architecture, site engineering, and landscape architecture.
 - f. Provision of sufficient certainty, timeliness, and predictability to the University in the development process to induce the University to incur substantial commitments to public infrastructure and amenities.
 - g. Assurance that the University provides the herein referenced public improvements, facilities, and

services.

- 3.20. The general benefits to be received by the University from the implementation of the Project include without limitation:
 - a. Obtaining sufficient certainty, timeliness, and predictability in the Town's development review and approval process to justify the required substantial up-front capital investment for a project that will require multiple years to build out.
 - b. Realization of the opportunity to implement the Carolina North development plan for a mixed use campus development that is consistent with Town and University goals and needs.
 - c. Securing development rights for up to three million square feet of buildings and associated development in accordance with an approved plan of development.
 - d. Integration of site plans, urban design elements, land uses, architecture, site engineering, landscape architecture, and mitigation measures over the entire Project.
- 3.21. In exchange for providing these benefits to the Town, the University desires to receive the assurance that it may proceed with the development of the Project in accordance with any and all existing Town development regulations and conditions of approval of the Town as they exist on the Effective Date, subject to the terms, conditions, and exceptions contained herein.
- 3.22. After careful review and deliberation, the University has determined that the latitude afforded the proposed Carolina North development plan and the certainty, timeliness, and predictability regarding Town development approval afforded by this Agreement provide important benefits for long-range University planning and development and justify the provision of the mitigation measures specified by this Agreement, which the University freely and with full knowledge and consent agrees to provide.
- 3.23. The terms and conditions of this Agreement have undergone extensive review by the Town's staff, advisory boards, and the Town Council and have been found to be fair, just and reasonable. After careful review and deliberation, the Town Council has determined and concluded that:
 - a. the University plans for development of the Project are consistent with the adopted plans and development ordinances of the Town.
 - b. the Project, with the terms and limitations of this Agreement, will further the Town's land use planning objectives and policies as set out in these documents and will protect the health, safety, welfare and economic well being of the Town and its citizens and will maintain the overall quality of life and of the environment within the Town.
 - c. the series of mitigation measures set forth in this Agreement are necessary to minimize the anticipated adverse impacts of the Project on the environment, on surrounding neighborhoods and the community, on the Town's traffic conditions, and on the levels of public services and facilities within the Town.
 - d. the Project as approved and conditioned by this Agreement presents a unique opportunity for the Town to secure quality planning and growth, to protect the environment, to strengthen the tax base and to acquire those public amenities described in this Agreement through the development approval process.
 - e. the Project plan as approved and conditioned by this Agreement is in the best interest of the Town and its citizens.
- 3.24. The Town, by electing to enter into this Agreement in accordance with statutory procedures, acknowledges that the obligations of the Town shall survive beyond the term or terms of the present Town Council and that such action will serve to bind the Town and future councils to the obligations thereby undertaken. By approving this Agreement, the Town Council has elected to exercise certain governmental powers at the time of entering into this Agreement rather than deferring its actions to some undetermined future date.
- 3.25. Based on the foregoing considerations, the University and the Town desire to enter into this Agreement for the purposes of:
 - a. agreeing upon the plan, design, and density of development on the relevant parcels of land and the types of uses thereon;
 - b. coordinating the construction and provision of infrastructure that will serve the above-described development and the community at large;
 - c. confirming the dedication and/or provision of the public amenities described herein; and
 - d. providing assurances to the University that it may proceed with the development of the Project in

accordance with the terms of this Agreement without encountering future changes in ordinances, regulations or policies that would affect their ability to develop the relevant parcels under the approved rezoning and the terms of this Agreement.

- 3.26. Pursuant to G.S. 160A-400.24, the Town Council conducted a public hearing on May __, 2009 to consider the approval and execution of this Agreement. The notice of public hearing specified, among other things, the location of the parcel of land subject to this Agreement, the development uses proposed on the parcels of land and a place where a copy of the proposed Agreement could be obtained.
- 3.27. On June __, 2009, the Town Council considered and approved this Agreement and the Town's execution of the same. The approval of this Agreement constitutes a legislative act of the Town Council.

ARTICLE 4. TERMS

NOW, THEREFORE, based upon the terms and conditions set forth herein and in consideration of the mutual promises and assurances provided herein, the parties do hereby agree as follows:

- 4.1. Recitals. The parties agree the foregoing Recitals are true and correct.
- 4.2. Term. The term of this Agreement shall commence upon the Effective Date and it shall terminate twenty (20) years thereafter unless sooner terminated by the mutual consent of the parties hereto or their successors in interest or is otherwise terminated pursuant to the terms of this Agreement. This term has been established by the parties as a reasonable estimate of the time required to carry out the Project subject to this Agreement and to obtain the public benefits of the Project. The Town finds that a term of this duration is reasonably necessary to assure the Town of the realization of the public benefits from the Project.
- 4.3. Zoning of the Property. On June __, 2009, concurrently with the approval of this Agreement, the Town Council rezoned the portion of the Horace Williams Tract located within the Town's planning and zoning jurisdiction to the University-1 (U-1) zoning district. The development allowed pursuant to this Agreement is consistent with the currently existing provisions of the U-1 zoning district and all other applicable provisions of the Town of Chapel Hill Land Use Management Ordinance (hereinafter "LUMO").
- 4.4. Development of the Property. The Project subject to this Agreement shall be developed in accordance with the terms and conditions of the LUMO in effect as of the Effective Date and with the terms and conditions of this Agreement, including all incorporated Exhibits. The maximum height, bulk, size, and design of buildings and the placement, location, and configuration of the development sites, infrastructure, open space, streets, sidewalks and other public improvements shall be in substantial compliance with this Agreement, subject, however, to any rights the University may have to make adjustments to the same as provided in Section 3.5.5 of the LUMO. Development shall be substantially consistent with that depicted on the Long-range Plan for Carolina North, which is set forth as Exhibit D attached hereto and incorporated herein by reference. Development shall be substantially consistent with the approved Carolina North Design Guidelines, which are set forth as Exhibit E attached hereto and incorporated herein by reference. Development shall be substantially consistent with the plan for the portion of the Carolina North that is subject to this Agreement, which is set forth as Exhibit F attached hereto and incorporated herein by reference.
- 4.5. Uses. The Project shall be devoted to those uses that are allowed under Section 3-3-5 of the LUMO for the U-1 zoning district.
- 4.6. Specific standards for development. The development of the Project shall be in substantial compliance with the specific standards and mitigation measures approved by the Town and the University as set forth in Exhibit G, attached hereto and incorporated herein by reference.
- 4.7. Development Schedule. The Project shall substantially comply with the specific timetables and triggers for action set forth in Exhibit G. The parties acknowledge that, as provided in G.S. 160A-400.25(b), the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of this Agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of

the circumstances.

- 4.8. Law in Effect at Time of the Agreement Governs the Development. Pursuant to G.S. 160A-400.26 and except as provided in G.S. 160A-400.29(b), the Town may not apply subsequently adopted ordinances or development policies to the Project during the term of this Agreement without the written consent of the University or its successors in interest. Accordingly, the University and its successors in interest shall have a vested right to develop the Project in accordance with the terms of this Agreement and the terms of the LUMO and any applicable laws and regulations as they exist as of Effective Date during the entire term of this Agreement. This Agreement does not abrogate any rights that may vest pursuant to statutory or common law or otherwise in the absence of this Agreement. The Parties agree, intend, and understand that the obligations imposed by this Agreement are only such as are consistent with state and federal law. In accordance with G.S. 160A-400.26(c), in the event State or federal law is changed after the Effective Date and the change prevents or precludes compliance with one or more provisions of this Agreement, the Town may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the Agreement, by ordinance after notice and a hearing. A certified copy of the LUMO and any other applicable Town ordinances in effect as of the Effective Date shall be provided to and maintained on file by the Town Clerk and the University Secretary.
- 4.9. Local Development Permits. In accordance with G.S. 160A-400.25(a)(6), the local development permits approved or needed to be approved for the development of the Project are set forth as Exhibit H attached hereto and incorporated herein by reference. The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve the University of the necessity of complying with their permitting requirements, conditions, terms or restrictions. The Town shall exercise reasonable diligence to expedite the processing of the required permit and approval applications for the development of the Project. The University shall in a timely manner provide the Town with all documents, applications, plans, and other information necessary for the Town to carry out its obligations hereunder.
- 4.10. Amendment. The terms of this Agreement may be amended by the mutual consent of the parties hereto or their successors in interest. A major amendment of the terms of this Agreement shall follow the same procedures as required for the initial approval of this Agreement, as are set forth in Section 3.5.5 of the LUMO. A minor modification pursuant to Section 3.5.5 of the LUMO shall not be considered to be an amendment to this Agreement. All minor modifications approved by the Town shall be memorialized by letter from the Town Manager and acknowledged by the University and shall be maintained on file by the Town Clerk and University Secretary.
- 4.11. Recordation/Binding Effect. Within fourteen (14) days after the Town enters into this Agreement, the University shall record this Agreement in the Orange County Public Registry. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties hereto. All of the provisions of this Agreement shall be enforceable during the term as equitable servitudes and constitute covenants running with the land pursuant to applicable law. Provided, the University's benefits under this Agreement shall inure only to those whom the University has expressly assigned them and only to the extent of the assignment. This Agreement shall be applicable to the air rights associated with land subject to the Agreement. This Agreement shall be applicable to lessees of property subject to this Agreement.
- 4.12. Annual Report. The University shall, within thirty (30) days after each anniversary of the Effective Date, commencing with the first anniversary after the Effective Date, submit a written report to the Town Manager on the development undertaken pursuant to this Agreement in the previous year. The report shall set forth all building permits issued, infrastructure installed, the status of participation by the University in the provision of or financing of public infrastructure for this Project, dedications and acquisitions of infrastructure by the University, and the projected schedule for development of the Project in the forthcoming year. This report shall also include a report demonstrating good faith compliance by the University with the terms of this Agreement. Upon receipt of the report, the Town Manager shall undertake the Periodic Review as set forth in Section 4.13 of this Agreement.
- 4.13. Periodic Review. Pursuant to G.S. 160A-400.27, the Town Manager shall conduct a periodic review (the "Periodic Review") at least every twelve (12) months, at which time the University shall be required to demonstrate good faith compliance with the terms of this Agreement. The Town Manager shall

promptly report the results of this review to the Town Council. If, as a result of the Periodic Review, the Town Council finds and determines that the University has committed a material breach of the terms or conditions of the Agreement, the Town Manager shall serve notice in writing, within a reasonable time after the Periodic Review, upon the University setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the defaulting Party a reasonable time in which to cure the material breach. If the University fails to cure the material breach within the time given, then the Town Council unilaterally may terminate or modify the Agreement, provided, however, that the notice of termination or modification or finding of breach may be appealed to the Town Board of Adjustment in the manner provided by G.S. 160A-388(b). Thereafter the University may pursue any other rights and remedies available at law or in equity. If the Town Council elects to unilaterally modify the Agreement, the University may elect for the Agreement to be terminated rather than accede to the Agreement with the modifications made by the Town Council. Failure of the Town to conduct this Periodic Review shall not constitute a waiver by the Town of its rights to otherwise enforce the provisions of this Agreement, nor shall the University have or assert any defense to such enforcement by reason of such failure to conduct a periodic review

- 4.14. Mediation. In the event either Party believes the other Party is in default or is in material breach, the Parties shall make a good faith effort to negotiate and informally resolve the issues in dispute prior to terminating this Agreement.
- 4.15. Development Timing and Moratoria. The University may develop all or any portion of the Project approved pursuant to this Agreement and may carry out the development in such order and sequence as the University shall determine in its discretion, provided such does not violate an express provision of this Agreement. Phasing of the development shall be based on sound engineering practices to ensure functional and safe street circulation and utility systems at all times. Phasing shall be based in such a way that all infrastructure improvements to be constructed within the Project area will be provided when or before they are necessary for that phase of the development. Absent an imminent threat to public health or safety, neither the right to develop nor the timing of development shall be affected by a moratorium or suspension of development rights adopted by the Town except to the extent imposed by this Agreement or by supervening federal or state law, order, rule or regulation.
- 4.16. Default. Apart from the Periodic Review process set forth in Section 4.13 of this Agreement, the failure of the University or the Town to comply with the terms of this Agreement shall constitute a default, entitling the non-defaulting Party or Parties to pursue such remedies as allowed under applicable law against the defaulting Party, provided, however, that no termination of this Agreement may be declared by the Town or the University absent its according to the defaulting Party the notice and opportunity to cure set out in Section 4.13 of this agreement. A Party believing the other Party to be in default shall provide reasonable notice of that to the other Party and shall provide that Party an opportunity to cure any default within a reasonable time.
- 4.17. Force majeure. In addition to specific provisions of this Agreement, neither the University nor the Town shall be responsible for any default, delay or failure to perform if such default, delay or failure to perform is due to causes beyond such Party's reasonable control, including, but not limited to, strikes, lockouts, actions or inactions of governmental authorities (excluding parties to this Agreement), epidemics, wars, embargoes, fires, hurricanes, acts of God or the default of a common carrier. In the event of a default, delay or failure to perform due to causes beyond such Party's reasonable control, any date or times by which the parties are otherwise scheduled to perform shall be extended automatically for a period of time equal in duration to the time lost by reason of the cause beyond the reasonable control of such Party. If written notice of such delay is given to the other Party after the commencement of such delay, an extension of time for such cause shall be granted in writing for the period of the enforced delay, or longer as may be mutually agreed.
- 4.18. Disclaimer of Joint Venture, Partnership and Agency. This Agreement shall not be interpreted or construed to create an association, joint venture, or partnership between the University and the Town, or to impose any partnership obligation or liability upon such parties. Neither the University nor the Town shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.
- 4.19. No Third Party Beneficiaries. The Agreement is not intended to and does not confer any right or benefit on any third party.

- 4.20. Legal Actions. In addition to any other rights or remedies, any Party may institute legal action against a defaulting Party to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purposes of the Agreement. In no event shall the Town or the University, or their respective officers, agents, or employees, be liable in damages for any breach or violation of this Agreement, it being expressly understood and agreed that the sole legal remedy available to the Parties for a breach or violation of this Agreement shall be a legal action in mandamus, specific performance, or other injunctive or declaratory relief to enforce the provisions of this Agreement. Legal actions shall be instituted in the Superior Court of the County of Orange, State of North Carolina, and the Parties hereto submit to the personal jurisdiction of such court without application of any conflicts of laws provisions of any jurisdiction. In the event that it becomes necessary for a Party to pursue a civil action against a defaulting Party, the prevailing Party in such action shall be entitled to recover its reasonable attorney fees and costs from the defaulting Party if such fees are awarded by a court of competent jurisdiction.
- 4.21. Notices. Any notice, demand, request, consent, approval or communication which a signatory Party is required to or may give to another signatory Party hereunder shall be in writing and shall be delivered or addressed to the other at the address below set forth or to such other address as such Party may from time to time direct by written notice given in the manner herein prescribed. Such notice or communication shall be deemed to have been given or made when communicated by personal delivery or by independent courier service or by facsimile or if by mail on the fifth (5th) business day after the deposit thereof in the United States Mail, postage prepaid, registered or certified, addressed as hereinafter provided. Parties shall make reasonable inquiry to determine whether the names of the persons listed in this Agreement should be substituted with the name of the listed person's successor.

All notices, demands, requests, consents, approvals or communications to the Town shall be addressed to:

Town Manager
Town of Chapel Hill
405 Martin Luther King, Jr. Blvd.
Chapel Hill, NC 27514-5705
919-969-2063 (fax)

All notices, demands, requests, consents, approvals or communications to the University shall be addressed to:

Vice Chancellor for Finance and Administration
UNC-CH
300 South Building
Chapel Hill, N.C. 27599-1000
919-962-0647 (fax)

- 4.22. Entire Agreement. This Agreement sets forth and incorporates by reference all of the agreements, conditions and understandings between the Town and the University relative to the Project and supersedes all previous agreements. There are no promises, agreements, conditions or understandings, oral or written, expressed or implied, among these parties relative to the matters addressed herein other than as set forth or as referred to herein or as contained in the LUMO or as expressed in the development conditions applicable to this parcel of land.
- 4.23. Construction. The parties agree that each Party and its counsel have reviewed and revised this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not apply in the interpretation of this Agreement or any amendments or exhibits hereto.
- 4.24. Assignment. After notice to the Town, the University may assign its respective rights and responsibilities hereunder to subsequent land owners of all or any portion of the relevant parcels of land, provided that no assignment as to a portion of the relevant parcel of land will relieve the assigning Party of responsibility with respect to the remaining portion of the relevant parcel of land owned by the assigning Party without the written consent of the Town.

- 4.25. Governing Law. This Agreement shall be governed by the laws of the State of North Carolina.
- 4.26. Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.
- 4.27. Agreement to Cooperate. In the event of any legal action instituted by a third party or other governmental entity or official challenging the validity of any provision of this Agreement, the parties hereby agree to cooperate in defending such action; provided, however, each Party shall retain the right to pursue its own independent legal defense.
- 4.28. Termination. This Agreement shall terminate on the earlier of the expiration of the term specified in Section 4.2 of this Agreement, a specific termination made by operation of the provisions of this Agreement, or when the Project has been fully developed and all of the University's obligations in connection with this Project are satisfied as mutually determined by the Town and the University. Termination of this Agreement as to the University or the portion of the Carolina North property subject to this Agreement shall not affect any requirements to comply with the applicable terms and conditions of the LUMO, site development permits, approval and acceptance of infrastructure improvements, and any applicable permits, nor shall it affect any other covenants of the University specified in this Agreement to continue after termination of this Agreement.
- 4.29. No Obligation to Develop. It is understood that the University's development of the Project depends upon a number of factors including, but not limited to, the availability of financing, state appropriations, receipt funds, general economic factors, and academic and programmatic needs. Nothing in this Agreement shall be construed as requiring the University to develop the subject property and any failure to develop the subject property shall not be deemed a default by the University of its obligations set forth in this Agreement.
- 4.30. No Deemed Waiver. Failure of a Party to exercise any right under this Agreement shall not be deemed a waiver of any such right and shall not affect the right of such Party to exercise at some future time said right or any other right it may have hereunder.
- 4.31. Severability. If any term or provision herein shall be judicially determined to be void or of no effect, such determination shall not affect the validity of the remaining terms and provisions. The Parties agree that if any provision of this Agreement is judicially determined to be invalid because it is inconsistent with a provision of state or federal law, this Agreement shall be amended to the extent necessary to make it consistent with state or federal law and the balance of the Agreement shall remain in full force and effect.
- 4.32. Authority. Each Party represents that it has undertaken all actions necessary for approval of this Agreement, and that the person signing this Agreement has the authority to bind the Town or the University.

IN WITNESS WHEREOF, the parties hereby set their hands and seals, effective the date first above written.

Town of Chapel Hill

By: _____
Title: _____

The University of North Carolina at Chapel Hill

By: _____
Title: _____

=====
State of North Carolina
County of Orange_

I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that he or she is _____ of the University of North Carolina at Chapel Hill and acknowledged, on behalf of the University of North Carolina at Chapel Hill, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the _____ day of _____, 2009.

My Commission Expires: _____
_____ Notary Public

=====
State of north Carolina
County of Orange

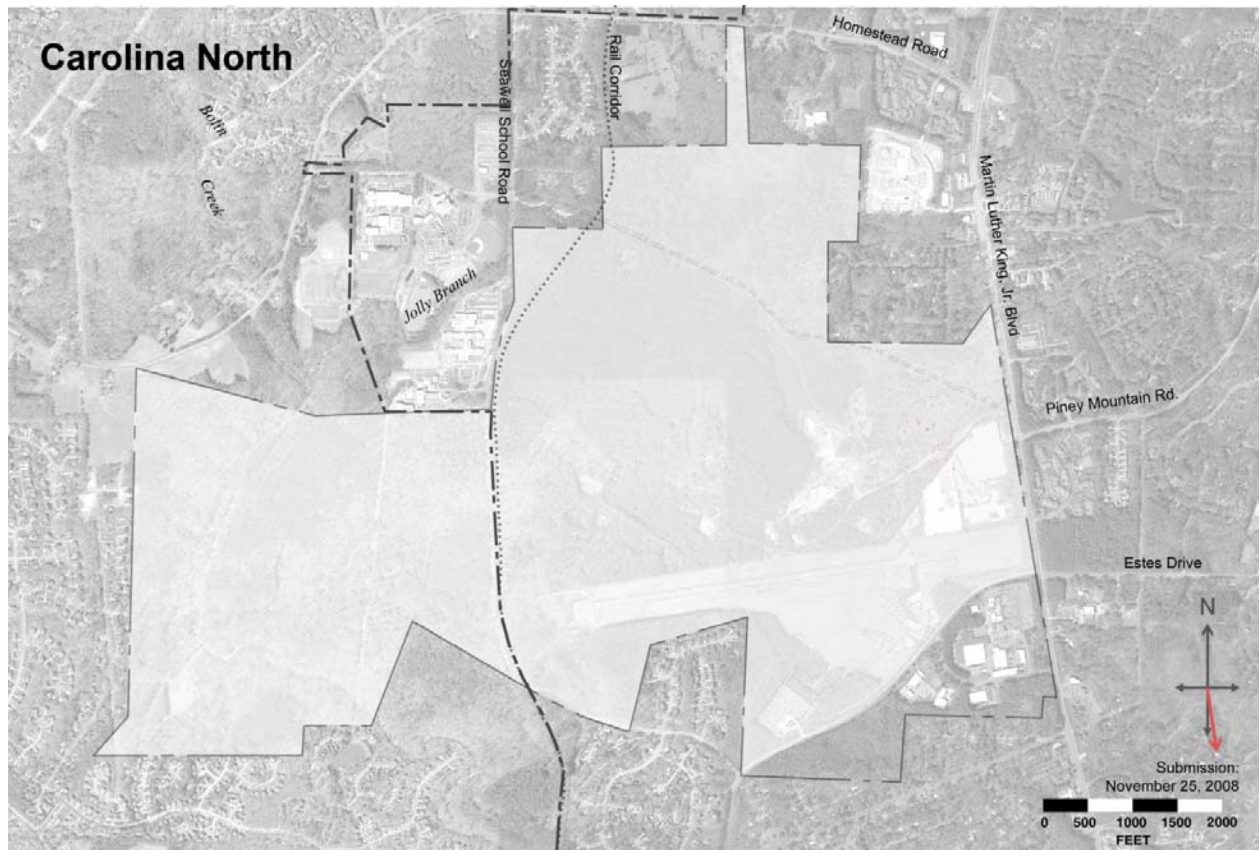
I, the undersigned, a Notary Public of the County and State aforesaid, do hereby certify that _____ personally came before me this day and acknowledged that he or she is _____ of the Town of Chapel Hill and acknowledged, on behalf of the Town of Chapel Hill, the due execution of the foregoing instrument. Witness my hand and official stamp or seal, this the _____ day of _____, 2009.

My Commission Expires: _____
_____ Notary Public

EXHIBITS INCORPORATED BY REFERENCE

- EXHIBIT A. Map and Description of Entire Horace Williams Tract, Including depiction of the Portion of Horace Williams Tract within the Town of Chapel Hill Planning and Development Regulation Jurisdiction
- EXHIBIT B. Map and Description of the Portion of the Horace Williams Tract with the Long-Range Plan of Development for Carolina North
- EXHIBIT C. Map and Description of the Portion of the Carolina North Project Addressed by this Development Agreement
- EXHIBIT D. Long-range Plan for Carolina North
- EXHIBIT E. Design Guidelines for Carolina North
- EXHIBIT F. Plan for the Portion of Carolina North Subject to this Development Agreement
- EXHIBIT G. Specific Standards and Mitigation Measures for the Portion of the Carolina North Development Subject to this Development Agreement
- EXHIBIT H. Local Development Approvals and Permits Required for the Carolina North Development Subject to this Development Agreement

EXHIBIT A. Map and Description of Entire Horace Williams Tract

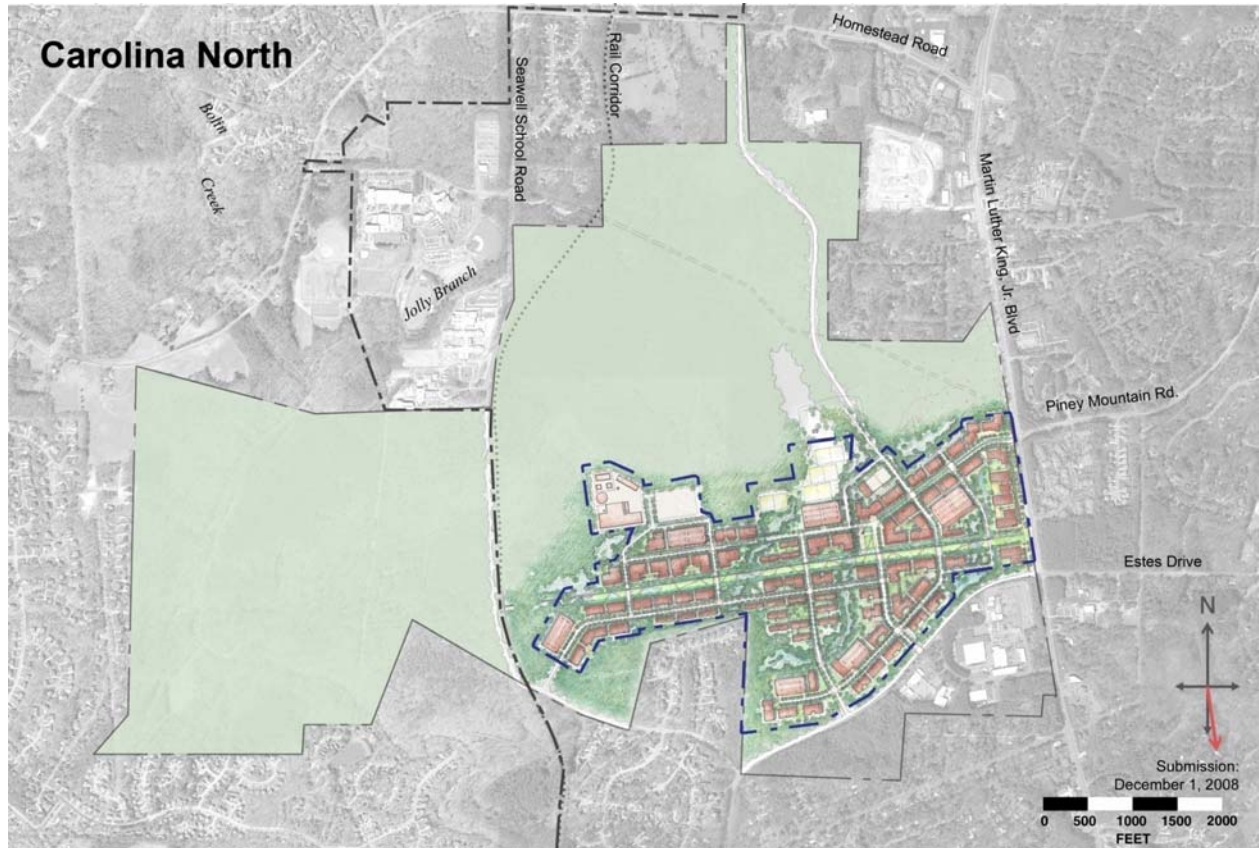


Property Boundary (approximately 947 acres)

Approximately 304 acres in Carrboro jurisdiction

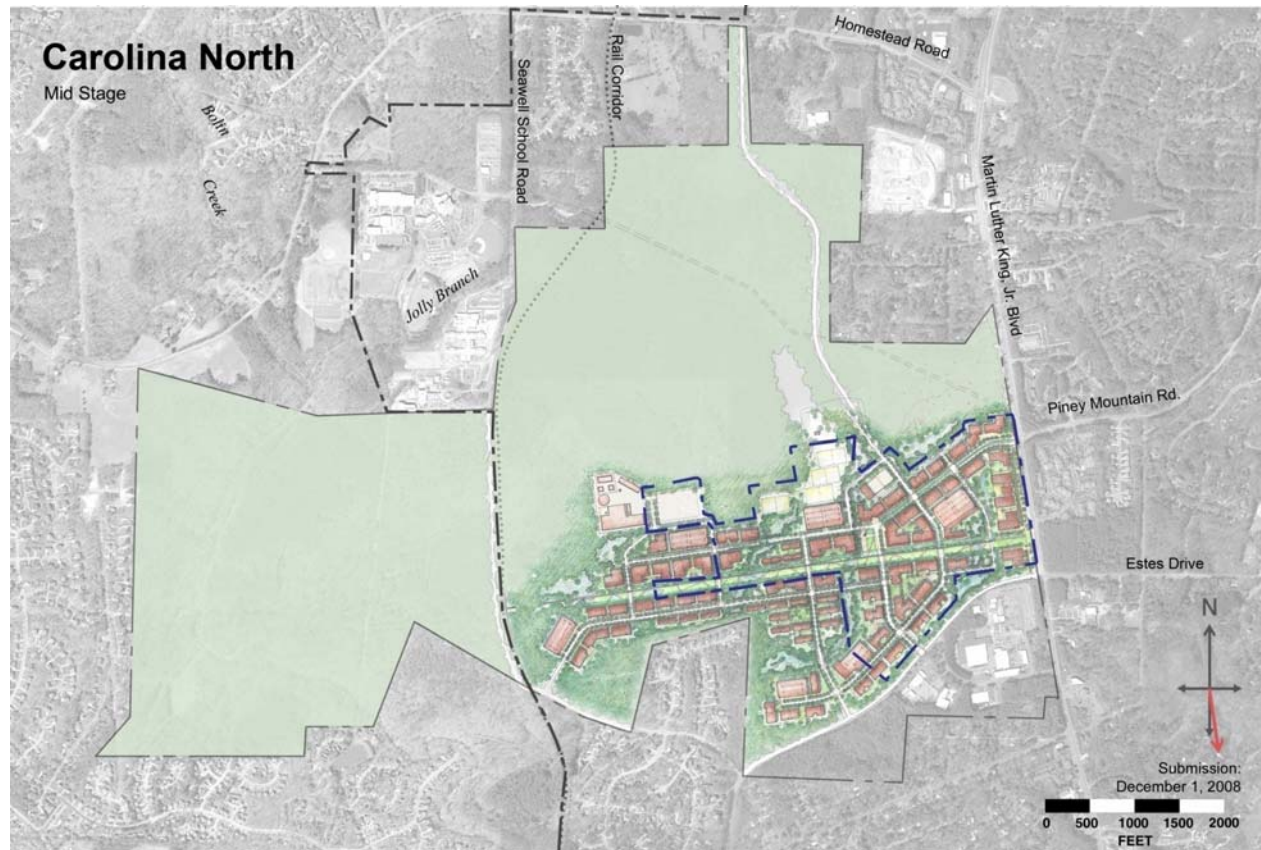
Approximately 643 acres in Chapel Hill jurisdiction

EXHIBIT B. Map and Description of the Portion of the Horace Williams Tract with the Long-Range Plan of Development for Carolina North



Long-range Development Plan Showing Development Anticipated within Fifty Years
Plan Boundary (approximately 228 Acres)

EXHIBIT C. Map and Description of the Portion of the Carolina North Project Addressed by this Development Agreement



Area Subject to Development Agreement
Approximately 133 acres
Provides for up to three million sq. ft. building space

EXHIBIT D. Long-range Plan for Carolina North

[Insert copy of approved development plan, substantially similar to 9/26/07 BOT adopted plan as modified,]

DRAFT

EXHIBIT E. Carolina North Design Guidelines

[Insert copy of approved design guidelines, substantially similar to 10/30/08 draft, as modified.]

DRAFT

EXHIBIT F. Plan for the Portion of Carolina North Subject to this Development Agreement

[Insert plan for the portion of the Carolina North project included within the Agreement.]

[Substantially similar to the site plan depicted within the Exhibit C boundary map.]

DRAFT

EXHIBIT G. SPECIFIC STANDARDS AND MITIGATION MEASURES FOR THE PORTION OF THE
CAROLINA NORTH DEVELOPMENT SUBJECT TO THIS DEVELOPMENT AGREEMENT

[Note: Specific provisions relative to project design, standards, performance measures, timing, mitigation measures, reporting, and evaluation are being discussed by staff and the public in the January-March 2009 period. Specific project standards and mitigation measures resulting from these discussions will be set forth in this Exhibit.

The first three topics (scale of the development subject to the development agreement, uses permitted, and mix of uses) were discussed by the Town Council and Board of Trustees in the fall of 2008. The Town Council and Board of Trustees are continuing their discussion of policies on several major topics over a series of meetings in January through March 2009 as is noted below. These topics are items 4 to 8 below.

Joint staff work groups from the Town and University are working to prepare potential provisions for inclusion on these and the remaining issues. Preliminary ideas and suggestions from this on-going staff work are noted below. This staff material is presented for discussion only, as no decisions have yet been made on the detailed standards to be submitted for formal town review.

Citizen comments and suggestions on the issues below are also being solicited in the January-March 2009 period. The staff ideas noted below for topics 11-18 were presented to a public information and input session on January 29. An additional public information and input session is scheduled for February 19 to secure comments and ideas on the remaining topics. A third session with attendance of the staff work groups is scheduled for March 4, 2009. Additional information relative to these materials and opportunities for comment is set out on the Town's Carolina North web site: <http://www.townofchapelhill.org/index.asp?nid=1816>.

The ideas and discussion noted below will be further revised to reflect these discussions. It is anticipated that formal review of the proposed agreement, including the specific provisions in this Exhibit, will be made by Town advisory boards and the public in April through June 2009.]

1. Scale of Development Approved

Note: The Town Council and University have agreed to focus discussion on the phase of Carolina North set forth in Exhibits C and D. This would address up to 3 million sq. ft. of development on an approximately 133 acre portion of the site located in the southeast corner of the overall Horace Williams site. This portion of the site is in the area previously used as a Town Operations Center and the Horace Williams airport.

2. Uses Permitted

Note: The Town Council and University have agreed to focus discussion on a proposal that would allow the site to be used for academic, research, medical, cultural, and/or related functions with supporting housing, retail, office, recreation, and/or open space uses, together with any incidental or accessory uses associated therewith that are allowed under the LUMO in the proposed U-1 zoning

district. These potential uses are essentially similar to the uses currently allowed in the OI-4 zoning district.]

3. Mix of Uses

Note: The Town Council and University have agreed to focus discussion on a proposal that provides for a mix of uses at all phases of development. The range of potential uses will be set out in the LUMO. Specific provisions relative to the mix of uses will be inserted here as needed.

4. Housing

Note: In the January 2009 Town Council-Trustees work session the University proposed that 25% of the total floor space in the Carolina North project covered by the development agreement be devoted to housing. The University proposed that this housing be incorporated into all phases of the development, such that if the area devoted to housing at any point drops to 15% or less of the built floor area, construction of non-housing space would halt until the housing space was at least 20% of the built space. The University also proposed that the housing availability be limited to students and employees of UNC and UNC HealthCare and that the housing provided have a full range of affordability (at a minimum meeting the Town affordable housing goals). Measures to maintain affordability over time would be also be included in the standards. There was also discussion of assurances that the housing provided would be in the form of compact, multi-family units and that all housing would meet specified energy efficiency and sustainability standards. Staff work is continuing to develop further details on the housing issue.

5. Preservation of Open Space and Natural Areas

Note: In the January 2009 Town Council-Trustees work session the University proposed that it commit to no buildings on the portion Horace Williams tract not included in the 233 acre portion included in the 50-year development plan for Carolina North. Members of the Town Council expressed interest in long-term protection for portions of the tract not planned for development. Staff work on preservation tools and options is on-going and the Council-Trustees will have additional discussions of this issue prior to April.

6. Stormwater Utility and Management

Note: The Town Council and Trustees are scheduled to discuss the stormwater utility dimension of this topic in the February 11 work session.

Description, stormwater management: Carolina North will employ a variety of best management practices for stormwater management control in order to achieve appropriate reduction and quality goals.

Key University Considerations:

1. Stormwater management should be integrated into the site, building and landscape design
2. Stormwater management strategies should be broadly coordinated and applied across Carolina North

Key Town Considerations:

1. Application of integrated stormwater strategies across Carolina North
-

Technical information to support policy decisions:

- Performance criteria in Development Agreement start with OI-4 requirements
- Compliance with town and UNC NPDES permits
- University will comply with Jordan Lake Rules
- Proposed Jordan Lake rules will set specific pollutant load targets
 - Jordan Lake guidelines push the limits of technology for pollutant removal
 - Design criteria in the development agreement
 - Submittal procedures outside development agreement and can be revised at staff level
 - Town and UNC staff will agree on required submittals for stormwater
 - Peak discharge and rate controls for specific design storms based on per-v.s post- development runoff
- Town would prefer stormwater quality facilities not located in street right-of-way maintained by the town (stormwater should be coordinated with street ownership)

7. Transportation: Transit, Parking, Streets, Sidewalks

Note: The Town Council and Trustees are scheduled to discuss this issue in the February 11 work session.

8. Fiscal Impacts

Note: The Town Council and Trustees are scheduled to discuss this issue in the March 11 work session.

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9. Energy Conservation and Carbon Credits

Description: Buildings at Carolina North will include overall energy conservation or carbon reduction goals

Key University Considerations:

1. Buildings at Carolina North will be built according to state-required energy efficiency standards
2. The energy efficiency and carbon reduction strategies at Carolina North will be implemented across the campus as a whole.
3. The University is committed to meeting the standards in the American College and University Presidents Climate Commitment (ACUPCC) (*these standards supersede the earlier CRED goals*)
4. The University has prepared a carbon inventory (<http://acupcc.aashe.org/ghg-report.php?id=372>)
5. The University will strive to develop Carolina North in a manner that supports the ACUPCC goals.

Key Town Considerations:

1. Carolina North should be use energy efficiently and support town sustainability goals
-

Technical information to support policy decisions:

- Show how each building addresses issues of energy/climate/stormwater etc. in the individual design
- Consider that energy efficiency goals may not be best measured by comparison to ASHRAE 90.1; identify appropriate metrics
- Consider energy efficiency goals within the sliding metrics of current standards of ASHRAE 90.1
- Define the role of hospital and private developers relative to these standards (cost/profit/jurisdiction)
- Identify council standard as a minimum for buildings outside of university control

Possible metrics and reporting:

- State Construction Office reports (“668” and NC G.C. 143) could be submitted to TOCH for information
- 668 (state)
- ASHRAE 90.1-2004 (30% below), 2007 (25% below)
- State code
- Green house gas (GHG) report is required on a regular basis to ACUPCC – could be provided to Council.
- Reduction strategies and progress will be published – could be provided to Council.

10. Water Use and Reclamation

Description: Carolina North development will include water conservation and reclamation measures

Key University Considerations:

1. Buildings at Carolina North will meet state-required water conservation standards
2. A whole-water approach at Carolina North will include water reclamation strategies
3. Buildings will include water-reclamation and water-reuse designs

Key Town Considerations:

- 1.
-

Technical information to support policy decisions:

- UNC could benchmark peers and establish overall % reduction goals
- UNC will work with OWASA and comply with appropriate OWASA policies and standards for water and sewer service
- Rainwater harvesting will be a significant method used by UNC to meet proposed Jordan Lake Rules
- If buildings are more efficient, less water is used for chilled water
- Use campus-wide metrics to preclude unattainable building-level goals

Possible metrics:

- Focus on overall goals for campus
- Total potable water use should be at least ____% less than what the demand would be under “conventional” guidelines
- State Construction Office reports (“668” and NC G.C. 143) could be submitted to TOCH for information
- Meet NC Plumbing code
- Meet SCO Manual requirements for reducing potable consumption per “NCGS 143 Article 86” a.k.a. Senate Bill 668

11. Design Standards and Public Art

Description: The University will develop design standards for Carolina North that support the mission of a mixed-use campus and includes opportunities for public art.

Key University Considerations:

1. Design Standards are approved by the University Board of Trustees; final building design is approved through University boards and trustees.
2. Design will be responsive to other goals (sustainability, program, site)
3. Design standards should include opportunities for public art.

Key Town Considerations:

1. Design standards should support other policy goals in the zone and development agreement
 2. Design standards should include opportunities for public art.
-

Technical information to support policy decisions:

- Design guidelines can be broad, such as those approved by the University Board of Trustees, or detailed, such as those included in the Town's LUMO.
- The ordinance and Development Agreement should contain appropriate levels of standards for Carolina North; some staff guidelines for key topics can be developed to guide individual building reviews

Recommended strategies:

- The University will provide the Town with information about most recent design standards for Carolina North as part of development agreement applications and phase applications for informational purposes and to demonstrate the inclusion of opportunities for public art.
- The staffs will prepare and use guidelines for key topics
- Intended street ownership should be identified at the phase level
- Develop a table of street designs for each type of street and identify street classifications on a map (e.g. Meadowmont and Southern Village)
- Establish clear reviewing responsibilities for exemplary standards (every cause needs a champion)

Phase-level topics to consider at review:

- Traffic calming in adjacent neighborhoods
- Construction management plan, two way traffic maintained on major roads during construction
- Pedestrian management plan, plan for median refuge islands and/or mid-block pedestrian signals
- Designation of bicycle lanes

- Provision of public art overlay with funding sources (such as % for art), opportunities for temporary art, and inclusion of artists on the design team
- Loading and service zone plan; service access for the phase so building service and traffic don't conflict

Access-related topics to consider:

- Building loading dock should not be next to high-volume (people or traffic) areas
- Appropriate setbacks for emergency vehicles; keep normal traffic separated from buildings but allow emergency and fire vehicle access
- Public gathering areas should not have vehicle access; emergency access should be provided
- Fire lanes can be combined with pedestrian access (multi-purpose use)
- Heliport location

Possible Guideline topics to be developed as a building-checklist for staff review (TOCH):

- Do HVAC and other mechanical units meet sound/noise requirements
- Bus/transit standards for pull-offs, stops, facilities, internal/external levels of service
- Coordinated service/pedestrian/emergency/delivery access
- Fire department ladder truck access to multi-story buildings
- Staging areas for emergency vehicles
- Maintain street and access route widths to accommodate fire trucks and ambulances including turning radius
- Pedestrian gathering places protected from vehicles
- Appropriate lighting for safety and security (different from current LUMO standards)
- Flexible standards to address changing technology (lighting)
- Type and number of traffic calming devices on vehicle roadways
- Landscape standards: metrics for tree canopy coverage on developed portions; landscaping and good sight lines should be coordinated for safety

Possible Guideline topics to be developed as a building checklist for design process (UNC):

- Mechanical platforms, guard rails, access and fall-protection
- Combine handicap and emergency access space markings (minimum distance to entries) with FDC access markings since both must remain open and unlocked
- Equal access plan ramps and curb cuts to correspond to FFIs
- Two access routes to any elevated public viewing sites atop buildings
- Hydrants and water supply in place prior to construction
- Special design standards for research facilities that maintain security
- On street parking should be coordinated with fire access
- Use universal design rather than accessibility design

Public comments from 1-29-09

- High-efficiency and sustainability in design – integrated pedestrian/bike (complete streets)
- I would prefer to see more pedestrian/bike paths to commute to CN rather than bike lanes. Separation is safer and I think a more efficient use of road capacity and better for urban form/design overall.
- Performance guidelines needed for design of the physical setting – expression thus far seems 2-D focusing on roads-blocks, not growth and visual and spatial linkages
- Hope art funding will be used for large structures that uniquely define public space rather than for small sculpture
- Design should include elements that exemplify usage of natural, green, locally sourced materials, design and labor as learning lab for both town and university
- Use of locally sourced timber from CN
- Let's make CN an international destination for scholars, business people, and policy makers on how a town and university achieved at least its 60% carbon reduction commitment and better yet the IPCC goal of 80% ghg reduction by 2050. This also happens to be President Obama and Governor Perdue's ghg reduction goal.
- This sounds like design integrity is delegated to UNC, neighbors may have good input to design features
- Use the AIA 2030 challenge to set the design standards for all construction and the energy infrastructure
- Use non-carbon emitting people movers on campus to reduce automotive traffic
- Grocery store – essential, reasonable prices though small, not another high-end
- Technology is adored by many Chapel Hill residents so many must realize that great changes will happen repeatedly in cars, fuels, water reclamation, etc; unpredictable!
- World population is rapidly growing. Chapel Hill will have its share of new population; we must expect this in a realistic way.
- Height pollution a concern
- Support special lighting/keeping skies dark
- Pedestrian dangers crossing MLK
- Support building need to be linked architecturally
- If public has no review, what will happen when the next Board of Trustees has no design sense? Design review has been delegated to UNC only.
- Support suggestion to make it a requirement to AIA 2030 standards
- Support architectural infrastructure integrity of new buildings

12. Police, Fire, and EMS Services and Facilities

Description: The plan for Carolina North will address the needs of appropriate service providers.

Key University Considerations:

1. Roadway access and networks will support provision of services
2. University and town providers should collaborate on identifying mutually satisfactory sites to combine service with other program needs at Carolina North
3. The plan for Carolina North will identify locations for service providers

Key Town Considerations:

1. Roadway access and networks will support provision of services
 2. The town service providers will participate in the Town Manager's review and approval of individual building sites
-

Technical information to support policy decisions:

Assumptions:

- The town and university service providers can continue working under the present arrangements for jurisdiction and operations.
- The growth at Carolina North will require additional facilities
- Those facilities should be co-located to maximize response capabilities, to share facilities as appropriate and to coordinate with other uses at Carolina North such as housing (for internship programs as appropriate) and exercise facilities.
- The joint facility could be part of a larger building with other uses
- Provision of parking, vehicle storage and hazardous-material response and storage facilities should be coordinated with the University's EHS department.

The service providers have identified the following program triggers for facilities at Carolina North:

- Phase 1 (3-5 years): 3600 SF joint facilities concurrent with first development at CN
- Phase 2 (7-10 years): 17,100 SF joint facilities (1.5M SF to 4M SF of CN construction)
- Phase 3 (15-18 years): 33,000 SF joint facilities (4M SF to 8M SF of CN construction)

Public comments from 1-29-09

- This is a good way to get input but I would rather comment on Group I issues
- UNC should pay for this (at least 90%)
- At what point will CN need its own EMS/Fire/Public Safety
- Fiscal equity – establish mechanism so taxpayers do not bear entire cost burden

13. Public Schools

Description: A school site will be provided as part of the Carolina North development.

Key University Considerations:

1. School board members will participate in identifying sites that respond to school needs as well as University policy on sustainability and campus program needs
2. The school site should be well integrated into the overall plan for Carolina North

Key Town Considerations:

1. School provision should be related to the adequate facilities ordinance
-

Technical information to support policy decisions:

Some considerations during the site selection and design review process that doesn't need to be included in the zone or Development Agreement between the Town and University:

- The site should have appropriate access for school functioning/program
- The site should be near residential development
- The school should have space for associated recreation/play facilities
- The percent of students in walk zone is a possible metric for choosing a site
- Adequate drop off and pick up area for the school should be provided
- Pedestrian and bicycle access should be provided to the school from adjacent neighborhoods

Metrics for the zone or Development Agreement:

- The University and School system should define the time period for site availability and communicate with the town
- The location and size of the school should relate to the adequate facilities ordinance
- The school should be included in the TIA report (or equivalent) for Carolina North when a site is designed

Public comments from 1-29-09

- Agree that more housing will support schools
- We need more housing density at CN; will help support school population plus easy commute to UNC
- Elementary schools don't need 10 acres as now required in NC – go compact
- I suggest the new school be held within the initial 250 acre phase otherwise the development footprint will expand; this is unacceptable.
- Agree!
- Should be model environmental center – environmental magnet – no child left inside!

14. Recreation Facilities

Description: Carolina North will include recreation facilities appropriate to the mixed-use campus including fields, trails, and greenways.

Key University Considerations:

1. Recreation facilities should fulfill program needs of the university, including athletic (cross country), sports-medicine (exercise) and academic/housing (play)

Key Town Considerations:

1. The Town's interests are served by having adequate indoor/outdoor facilities available at Carolina North
-

Technical information to support policy decisions:

Potential standards:

ADA guidelines for accessible public right-of-way
ADA accessibility guidelines for outdoor developed areas
ADA guidelines for outdoor developed areas (trails, etc)
ADA accessibility guidelines for recreation facilities
ADA accessibility guidelines for play areas (playgrounds)
AASHTO standards for trails

Potential review guidelines:

- Minimize disturbance and ensure good material and maintenance choices of recreation fields, trails and greenways
- Identify and avoid regulatory floodplains and stream buffers when locating facilities
- Consider co-location of trails, greenways, pedestrian paths and other access needs in the more developed areas of campus
- Co-locate trails, utilities and roads in the less developed areas of the property

Potential policy items:

- Consider shared-use recreation facilities with pay-for-use policy, public access where practical
- Continued public access to current system of trails
- Create a permanently preserved natural park of at least 100 acres, similar to Battle Park. This park should have trails and picnic facilities. This park could be used to preserve a significant natural area as well as to provide an area for relaxation once the entire Carolina North site is built out.

Potential types of facilities:

- Soccer/athletic fields
- Outdoor basketball courts
- Building containing gymnasium/courts/dance/exercise/climbing wall/etc.

- Children's play area
- Mix of trail types including paved greenway trails, single track paths, and wider walking paths.
- A natural surface trail system that supports the following activities:
 - Walking/running
 - Mountain biking
 - Bird watching
 - Dog walking
 - Orienteering/geocaching
 - Running and biking races
 - Kite, RC, and model rocketry flights
- Athletic fields
- Competition gardens
- Farmer's Market
- Maintenance facilities
 - Clearly defined maintenance routines and responsibilities
- Parking
- Bathrooms/toilets
- Picnic shelters
- Maps

Potential users:

- University students, faculty, staff
- Families
- Local and regional user groups
- Local communities, including transient population

Public comments from 1-29-09

- Think Universal Design Standards-facility that accommodates individuals of all stages of disabilities
- Connect greenways to adjacent neighborhoods
- Promote bike races there
- The historic spirit of community in the Horace Williams Tract expands far beyond 100 acres. Battle Park should not be the model for greenspace preservation at Carolina North "100 acres" out of 1000 is not significant preservation
- Keep up the good work on the trails at Carolina North
- Preserve the trails!

15. Greenways

Description: Pedestrian and bike connectivity with neighborhoods and the community will be a key component of Carolina North.

Key University Considerations:

1. Greenways should be well integrated into the long-term development plan for the property
2. Greenways should support the programs and transportation goals at Carolina North

Key Town Considerations:

1. Greenways should connect to the community-wide system and be coordinated with the Town's Greenways master plan
-

Technical information to support policy decisions:

Potential standards:

- ADA guidelines for accessible public right-of-way
- ADA accessibility guidelines for outdoor developed areas
- ADA guidelines for outdoor developed areas (trails, etc)
- Geometric Design STDS

Potential review guidelines:

- Maintenance consideration for pavement and access
- Minimize disturbance and ensure good material and maintenance choices of recreation fields, trails and greenways
- Identify and avoid regulatory floodplains and stream buffers when locating facilities
- Consider co-location of trails, greenways, pedestrian paths and other access needs in the more developed areas of campus
- Co-locate trails, utilities and roads in the less developed areas of the property
- Greenway trails should be a minimum of 10 feet in width throughout most of the site. In the campus area the path should be 12 feet wide.
- Connections should be 'thoughtfully linear' as well as topographically and environmentally sustainable and should not degrade the natural environment.
- Maintenance routines and responsibilities should be unified and clearly defined.
- Greenways and natural surface trails are not the same.
- Natural surface trails should be accessible from greenway.
- There should be a limited number of designated access points to the natural trail system
- Unauthorized connections should be discouraged.
- Connections should be hierarchical based on type or volume of connection.
- Site fixtures and amenities should be required at designated trail heads, including but not limited to:
 - Informational kiosk
 - Map/locator/wayfinding device
 - Gated access – prohibit motorized access

- Trash cans
 - Water fountain/spigot
 - Bathroom
 - Recreational parking
 - Bicycle racks
- UNC Facilities Services/Forest Management should be allowed to provide input to and approve proposed trail re-alignments, closures, and designated access points.

Potential policy:

- Early installation (even rough) of greenways and paths for pedestrians and cyclists
 - Build a temporary non-paved central trail to Homestead Road once the airport runway is closed and deactivated. This would eventually be replaced by the paved trail.
 - Utility corridors could also have early access
- Thoughtful connections from all directions for cyclists and pedestrians
- Negotiate ped/bike easements with surrounding cul-de-sac neighborhoods
- Consider a “Battle Park” model at Carolina North
- Consider “Biological Preserve” in association with a “Battle Park” element, all related to riparian buffers
- Tie construction of the greenway trail system to certain benchmarks related to construction of buildings. For example, build a certain amount of greenway trail for each 500,000 sf of floor area of buildings.

Potential improvements:

- Build a paved greenway trail from Estes Drive Extension through the site to Homestead Road. This trail would eventually connect with the Town’s extension of the Bolin Creek Trail from the south and the Town’s Horace Williams Trail to the north
- Build a paved greenway trail through the center of the first phase campus in an east/west direction to eventually connect with Carrboro/Chapel Hill extension of the Bolin Creek Trail.
- Provide method of crossing Estes Drive extension via underpass or pedestrian refuge.
- Continue greenway trail through the campus area as a separate facility with as few road intersections as possible. The trail should not disappear in the campus area by merging into bike lanes.

16. Historic and Cultural Features

Description: Important historic and cultural features on the site will be appropriately identified and protected

Key University Considerations:

1. The Ecological Assessment identified key historic sites
2. An Archeological survey will be done for each phase of Carolina North
3. Archaeological survey should be coordinated with Army Corps permit and Environmental Assessment permitting
4. Archaeological survey should be coordinated with trail planning/maintenance

Key Town Considerations:

1. Sites should be identified and protected as appropriate
-

Technical information to support policy decisions:

Guiding legislation/law regulating archeological resources:

- NC Archaeological Resources protection Act
- NC Statutes on Historic Cemeteries
- National Historic Preservation Act/National register of Historic Places

Management of Archaeological Sites (potential UNC guidelines):

- Identify sites (with signage)
- Assess sites
- Provide interpretation where appropriate
- Make information available on-line, through the web
- No degradation of natural processes or water quality
- Land managers should be aware of progress and communicate to public

Public comments from 1-29-09

- The archeological standards are pretty much identical to existing state/fed standards. How does the development agreement add to what's already on the books?

17. Solid Waste Management

Description: Solid waste will be managed by the University with appropriate reduction and recycling goals for construction and occupancy. The basic method (someone puts it out, someone picks it up) doesn't change but policies should allow for changes in technology, methods, and providers over time.

Key University Considerations:

1. There should be clear direction on who will service each building and that each building be designed accordingly
2. Service should be provided efficiently, safely and economically by the designated provider

Key Town Considerations:

3. Trash and recycling should be coordinated in review and delivery of services
 4. The current system for coordinating Orange County and Municipal services with UNC services works well; emulate the positive aspects
-

Technical information to support policy decisions:

Assumptions:

- There will be recycling at Carolina North
- Clear direction should be provided for each building on who will provide service
- Collection and Hauling:
 - Who and How should be defined for each project. Who may depend on occupancy, ownership or use. The method for commercial collection (front load, roll-off 15 CY or less) and residential collection (semi automated) should be identified at building review.

Possible Strategy:

- Joint solid waste plan review (town, county, UNC) at two stages: conceptual (Phase plan) and building specific (staff permit review)

Possible Guideline topics to be developed as a building-checklist for staff review (TOCH):

- Status of regulated recyclable material permitting
- Ability to apply 3-R fee assessments to Carolina North facilities served by Orange County
- Potential for requiring waste collected by non-UNC/Town to be delivered to county disposal facilities
- Determine County/town application (if any) of landfill recycling material bans/mandatory recycling requirements
- Focus on methods for waste avoidance and minimization
- Treat remaining waste as a resource
- Waste management of construction and demolition process should be addressed
- Waste management for completed and occupied building should be addressed
- Recycling collection programs shall be required at and for all buildings—regardless of whether UNC provides waste and recycling collection services or the tenants provide them.

- It is likely that there will be retail, commercial and residential space that will be rented or maintained by non-University individuals and organizations (such as is currently done with single family residences, commercial space on Franklin Street, and non-UNC groups such as EPA, Carolina Inn, etc.). We expect that each business, building, office, home, etc. will have recycling collection services available as a standard service.
- Service drives are a must. (No landlocked buildings) Must have outdoor service area for each building or a central, well accessible (vehicular and pedestrian) access.

Possible Guideline topics to be developed as a building checklist for design process (UNC):

- Design for waste minimization (to reduce waste during construction)
- Aesthetics should not trump sustainability (and recycling). Mandate recycling in entryways. (Many times recycling is not allowed in the entrance of buildings where it is needed most...)
- Use horizontal compactors vs. dumpsters whenever possible. Consolidate outdoor waste service areas whenever this can be done AND it does not put an undue burden on housekeepers.
- Design for flexibility – to reconfigure as programming needs change
- Need design standards for any gated service areas (gates)
- Make sure each service area (or building) has an adequate (screened) holding area for recyclable materials—in case we do the “building flush” method of collection (Sarah to explain)
- Use existing OWRR guidelines for recycling in finished building (design) and C/D waste management guidelines... www.fac.unc.edu/OWRRGuidelines
- Design for deconstruction and recycling (mechanical vs. chemical fasteners—bolts vs. glue, recyclable materials)
- Use recycled materials whenever possible (taking above list into consideration)
- SWMP should be REQUIRED for each construction and demo project with the FP&C (emphasis on construction) personnel holding contractors accountable. BEFORE construction starts, during/MONTHLY, and AFTER. (looking for accountability)
- Computerized web-based data entry for contractors to submit monthly stats (C/D). This should be part of the project report/data/info that’s on the web... so folks can look up the project and see the data as it is reported (may need massaging by staff...)
- Set aside space for source separation during construction. Require this method of waste management and recycling (vs. commingled/material processing facilities).
- Waste management plan required for post-occupancy (trash, recycling)

Public comments from 1-29-09

- Strive for innovative and flexible approach to waste generation and disposal
- Net-zero waste?
- Compost all green and food waste at Carolina North and VSC there
- Reduce, Minimize (monitor and mitigate)
- More than recycling (which should be a given) we need waste reduction strategies before the point of throw-away.
 - How will paper be minimized?
 - Use high quality materials that won’t need frequent replacement

18. Landfill Remediation

Description: Development of certain areas of Carolina North may require landfill remediation consistent with the planned use.

Key University Considerations:

1. The University will develop a remediation strategy consistent with current standards, requirements and future land use plans.

Key Town Considerations:

1. The landfill area will be remediated in a manner that is consistent with safeguarding the public health, safety and welfare.
-

Technical information to support policy decisions:

Suggested statements:

- University should communicate with Orange County and the Town of Chapel Hill during landfill mitigation planning and development of the mitigation strategy
- Consider utilizing DENR old landfill program funding to the extent possible
- Explore opportunities to develop joint mitigation or funding strategies

Mitigation measure:

- DENR standard for landfill remediation

Public comments from 1-29-09

- Conduct public education session to track
- Make this a major research opportunity especially for bio-tech super bugs.

19. Stream Buffers

Description: Streams will be appropriately buffered at Carolina North

Key University Considerations:

1. The Ecological Assessment identified streams and regulatory buffers at Carolina North
2. Resource Conservation District regulations will apply to Carolina North
3. Other agencies (such as the Army Corps) will have additional regulatory requirements

Key Town Considerations:

1. Resource Conservation District regulations will apply to Carolina North
-

Technical information to support policy decisions:

- Town RCD requirements will apply; identify any activities currently in place that should be 'grandfathered' in.
- Stream buffer impacts: avoid, minimize, mitigate
- Jordan Lake TMDL regulations will increase buffer regulations over RCD
- State has jurisdiction of isolated upland wetlands (outside 404/401)
- Consider restoration/enhancement of riparian buffers
- Permanently protect significant wildlife corridors (~300' wide) along streams (while allowing essential utility lines, trails, etc.)
- Stream access should be available for educational purposes (i.e. water quality testing)
- Coordinate with forest management for plans, notice, and activities with potential impacts
- Could have greenway trail in the RCD buffer but Jordan Lake rules apply to area closest to streams (~30 feet)

20. Trees and Landscaping

Description: Carolina North will include significant street, landscape and natural plantings and landscaped areas and tree protection measures.

Key University Considerations:

1. Tree and landscape areas may also have a stormwater management function at Carolina North, including in roadways
2. Appropriate native and non-invasive species will be used at Carolina North
3. Landscape areas will be designed to support the Carolina North design guidelines

Key Town Considerations:

- 1.
-

Technical information to support policy decisions:

- Will potable water be used for recreation fields (as back-up)?
- Goals: Low maintenance, low fertilizer use
- Use the list of 'best suited' plant materials for Carolina North campus (already in use for main campus)
- Establish existing and proposed tree canopy mix
- Establish hierarchy of tree planting goals (working landscapes: young age, street trees: mid-age, permanent landscapes: mature age)
- Establish landscape irrigation hierarchies
 - Plant establishment requires irrigation
 - Critical landscapes require irrigation (define critical)
 - Priorities for irrigation are: rainwater, reclaimed water and potable water (as last resort)

21. Sedimentation

Description: Construction at Carolina North will be subject to appropriate soil and erosion control measures and State oversight.

Key University Considerations:

1. Projects will be subject to standard oversight measures
2. The University will develop additional construction-related soil erosion control measures for building projects at Carolina North

Key Town Considerations:

1. Regular distribution and review of Erosion and Sedimentation plans
-

Technical information to support policy decisions:

- E&S measures should be applied for all land disturbance projects
- Orange County could receive courtesy review of E&S plans at individual project review
- E&S plan (not permit) should be provided for projects between 20,000 SF and 1 acre of disturbance

Follow up inspections and checklist following NPDES construction permit requirements could be requested for projects under 1 acre of disturbance.

22. Neighboring Lands, Compatibility, Buffers

Description: Development at Carolina North will be compatible with existing adjacent development and appropriately buffered.

Key University Considerations:

1. Development near existing neighborhoods should respect buffers, height limits, lighting and noise impacts

Key Town Considerations:

1. New uses should protect or enhance existing uses
-

Technical information to support policy decisions:

- Identify Perimeter Transition Area (PTA) projects in phase plan
 - Use PTA process from OI-4 to meet with neighbors in advance of individual project review
 - Add drainage to PTA topics (already includes specific noise, lighting, visual impacts)
- Town should identify neighborhood protection districts around/beyond Carolina North for the comprehensive plan

23. Noise

Description: The Chapel Hill noise ordinance will be in effect at Carolina North

Key University Considerations:

1. Noise from construction will be subject to the applicable noise ordinance
2. Applications for new construction will demonstrate compliance with the ordinance

Key Town Considerations:

1. Town noise ordinance applies during construction and occupancy
-

Technical information to support policy decisions:

- Refer to town noise ordinance for
 - Construction
 - Occupancy

Complaints should be handled by Chapel Hill Police/Chapel Hill Engineering through UNC construction management to insure procedures are in place to remediate or address legitimate complaints.

24. Lighting

Description: Lighting should not have a negative effect on adjacent users, neighborhoods or other uses at Carolina North

Key University Considerations:

1. Lighting should be energy efficient
2. Lighting should be appropriate for the program requirements and times of use

Key Town Considerations:

1. Lighting should not negatively affect surrounding neighborhoods or the community
-

Technical information to support policy decisions:

The Chapel Hill lighting standards will be in effect at Carolina North
(e.g., no increase in lighting foot-candle levels at the adjacent property line)

Lighting for Carolina North should be designed with a three-point basic strategy:

- A 'dark skies' approach should be applied to the campus as a whole
- Streets should be lit to Town or DOT standards
- Building code requirements should be met for new buildings
 - Recommendations for lighting levels for certain activities are covered in building code e.g. exiting and safety

General Comments from 1-29-09 Public Meeting

Description: These comments addressed topics that were not on the agenda for 1-29-09 as policy topics but which relate to the development of Carolina North

Process

- Make group issues and “draft concerns” available online and before public meetings
- Make comments available to public so others can see them
- Share latest draft of development agreement provisions before public meetings

Energy

- What is the carbon footprint:
 For development phase ?
 For whole project, annual, when completed?
- If southern Orange County were to conform to Kyoto agreement how many carbon credits would need to be acquired?
- How is diminishing supply of petroleum taken into consideration?
- What assumptions are being made about environment (petroleum, gas, water) in which Carolina North is being developed?

Transit

- Will a road be built from Homestead/Weaver Dairy Ext. through the forest to accommodate construction traffic?
- Require transit infrastructure pegged to number of square feet and projected trips
- This is essential to mitigate air quality issues

Other

- What assurances will be made against invasive infrastructure beyond the footprint of Phase I? (Other)
- Since the Innovation Center, the gateway to Carolina North, is not actually a UNC building, is it's footprint included in the 228 acres of Phase I?
- Are we accounting for and measuring the footprint of the proposed development continuously and rigorously?
- On the current proposed plan the Innovation Center and Law School are at opposite ends of Phase I. Should not the building be progressively phased so that the disruption of infrastructure is minimized?
- Support provision to prevent bio terrorism warfare techniques or any activity that jeopardizes public health

EXHIBIT H. Local Development Approvals and Permits Required for the Carolina North Development Subject to this Development Agreement

Development of the Carolina North project that is subject to this Development Agreement is subject to subsequent approval of the Town of the following:

1. Site development plans for each discrete building project.

[List all other applicable local permits]

DRAFT